

## HB0349S02 compared with HB0349

~~deleted text~~ shows text that was in HB0349 but was deleted in HB0349S02.

inserted text shows text that was not in HB0349 but was inserted into HB0349S02.

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Representative Casey Snider proposes the following substitute bill:

### WATER REUSE PROJECTS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Casey Snider**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses ~~approval of~~ water reuse projects.

##### Highlighted Provisions:

This bill:

- ▶ defines ~~a term~~ terms;
- ▶ addresses approval of water reuse projects, including providing that the director of the Division of Water Quality approves;
- ▶ prohibits approval of certain water reuse projects impacting the Great Salt Lake;
- ▶ authorizes rulemaking;
- ▶ creates exceptions;
- ▶ addresses water replacement plans;
- ▶ provides for investigation of water reuse impacts as part of the integrated

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assessment of the Great Salt Lake; and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**19-5-104**, as last amended by Laws of Utah 2020, Chapter 256

**19-5-106**, as last amended by Laws of Utah 2012, Chapter 360

**73-3c-102**, as enacted by Laws of Utah 2006, Chapter 179

**73-3c-301**, as last amended by Laws of Utah 2008, Chapter 382

**73-3c-302**, as last amended by Laws of Utah 2008, Chapter 382

**73-3c-304**, as enacted by Laws of Utah 2006, Chapter 179

**73-10g-402**, as enacted by Laws of Utah 2022, Chapter 81

#### ENACTS:

**73-3c-103**, Utah Code Annotated 1953

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

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

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

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules that:

(a) taking into account Subsection (6):

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

(A) requirements pertaining to applications for a loan;

(B) requirements for determination of an eligible project;

(C) requirements for determination of the costs upon which a loan is based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of a sewage treatment plant, including a major

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interceptor, collection system, or other facility appurtenant to the plant;

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

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

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

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

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

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

(b) govern inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for underground injections, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of a contaminant in underground water that supplies or can reasonably be expected to supply a public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may:

(A) result in the public water system not complying with any national primary drinking water standards; or

(B) otherwise adversely affect the health of persons;

(c) govern sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements; and

(d) notwithstanding Section 19-4-112, govern design and construction of irrigation systems that:

(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

(ii) are constructed after May 4, 1998.

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(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and enforce rules and establish fees to cover the costs of:

(i) managing the certification and testing program; and

(ii) testing for certification of operators of treatment works and sewerage systems operated by political subdivisions.

(b) In establishing certification rules under Subsection (2)(a), the board shall:

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

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

(iii) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

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

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

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

(B) has been employed at least 10 years in the operation of that treatment works or sewerage system before March 16, 1991; and

(C) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.

(3) The board shall:

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

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

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- (c) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;
- (d) meet the requirements of federal law related to water pollution;
- (e) establish and conduct a continuing planning process for control of water pollution, including the specification and implementation of maximum daily loads of pollutants;

~~[(f) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act, and]~~

~~[(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;]~~

~~[(g)]~~ (f) (i) review total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions the staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and

~~[(h)]~~ (g) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and

(ii) approve or disapprove the settlement described in Subsection ~~[(3)(h)(i)]~~ (3)(g)(i).

(4) The board may:

(a) order the director to issue, modify, or revoke an order:

(i) prohibiting or abating discharges;

(ii) (A) requiring the construction of new treatment works or any parts of the new treatment works;

(B) requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of existing treatment works; or

(C) the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; or

(iv) requiring compliance with this chapter and with rules made under this chapter;

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(b) advise, consult, and cooperate with another agency of the state, the federal government, another state, an interstate agency, an affected group, an affected political subdivision, or affected industry to further the purposes of this chapter; or

(c) delegate the authority to issue an operating permit to a local health department.

(5) In performing the duties listed in Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.

(6) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection (1)(a)(i).

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-5-106:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Section 2. Section **19-5-106** is amended to read:

### **19-5-106. Director -- Appointment -- Duties.**

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

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

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

(c) develop programs for the management of sewage sludge;

(d) subject to the provisions of this chapter, enforce rules made by the board through the issuance of orders, which orders may include:

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- (i) prohibiting or abating discharges of wastes into the waters of the state;
- (ii) requiring the construction of new control facilities or any parts of them or the modification, extension, or alteration of existing control facilities or any parts of them, or the adoption of other remedial measures to prevent, control, or abate water pollution; or
- (iii) prohibiting any other violation of this chapter or rules made under this chapter;
- (e) review plans, specifications, or other data relative to pollution control systems or any part of the systems provided for in this chapter;
- (f) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works;
- (g) after public notice and opportunity for public hearing, issue, continue in effect, renew, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:
  - (i) control the management of sewage sludge; or
  - (ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;
  - (h) meet the requirements of federal law related to water pollution;
  - (i) under the direction of the executive director, represent the state in all matters pertaining to water pollution, including interstate compacts and other similar agreements;
  - (j) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution; ~~and~~
  - (k) subject to Subsection [~~19-5-104(3)(h)~~], 19-5-104(3)(g), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter~~[-]; and~~
- (l) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and
  - (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act.
- (3) The director may:
  - (a) employ full-time employees as necessary to carry out the provisions of this chapter;
  - (b) subject to the provisions of this chapter, authorize any employee or representative of the department to enter, at reasonable times and upon reasonable notice, in or upon public or

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private property for the purposes of inspecting and investigating conditions and plant records concerning possible water pollution;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the construction, installation, or acquisition of any facility, land, building, machinery, equipment, or any part of them conforms with this chapter;

(f) cooperate with any person in studies and research regarding water pollution and its control, abatement, and prevention;

(g) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution; or

(h) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.

Section 3. Section **73-3c-102** is amended to read:

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

As used in this chapter:

(1) "Director" means the director of the Division of Water Quality appointed under Section 19-5-106.

(2) "Domestic wastewater" or "sewage" means:

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

(i) structures with installed plumbing facilities; and

(ii) industrial establishments; and

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

(3) "Industrial facility" means a factory, mill, plant, mine, refinery, warehouse or building or collection of buildings, including the land on which it is located, and the machinery and equipment located at or within the facility used in connection with the operation of the



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### facility in an industrial business.

[~~2~~] (~~3~~;4) "POTW" means a publicly owned treatment works as defined by Section 19-5-102.

[~~3~~] (~~4~~;5) "Public agency" means a public agency as defined by Section 11-13-103 that:

- (a) owns or operates a POTW;
- (b) collects and transports domestic wastewater;
- (c) holds legal title to a water right;
- (d) is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;
- (e) is a water supplier; or
- (f) sells wholesale or retail water.

[~~4~~] (~~5~~;6) "Return flow requirement" means return flow required under a water right.

[~~5~~] (~~6~~;7) (a) "Reuse authorization contract" means a contract or contracts among:

- (i) a public agency proposing a water reuse project;
- (ii) the owner or operator of a POTW that treats domestic wastewater proposed for use in a reuse project;
- (iii) the owner of a domestic wastewater collection or transportation system if the reuse project will divert domestic wastewater directly from that entity's collection or transportation system;
- (iv) the legal title holder of the water right designated for use in the reuse project, unless the legal title holder of the water right has delegated to another the right to the beneficial use or reuse of the water;
- (v) each water supplier not holding legal title to the water right designated for use in the reuse project that sells or delivers water under the water right designated for use in the reuse project;
- (vi) each entity that will engage in the wholesale or retail sale of water from the water reuse project; and
- (vii) the retail water supplier retailing water that will be replaced by reuse water supplied under the proposed reuse project.

(b) A reuse authorization contract shall:

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

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

~~[(6)]~~ ~~(~~7~~)~~ ~~(~~8~~)~~ "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Section 19-5-104.

~~[(7)]~~ ~~(~~8~~)~~ ~~(~~9~~)~~ (a) "Water reuse project" or "project" means a project for the reuse of domestic wastewater that requires approval by the ~~[Water Quality Board in accordance with Section 19-5-104]~~ director under Section 19-5-106 and the state engineer under Section 73-3c-302.

(b) "Water reuse project" or "project" does not include water reused at or by an industrial facility for operating or processing purposes.

~~[(8)]~~ ~~(~~9~~)~~ ~~(~~10~~)~~ "Water right" means:

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

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

(i) to appropriate;

(ii) for a change of use; or

(iii) for the exchange of water.

~~[(9)]~~ ~~(~~10~~)~~ ~~(~~11~~)~~ "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

Section 4. Section **73-3c-103** is enacted to read:

### **73-3c-103. Water reuse projects and the Great Salt Lake -- Exception.**

(1) Except as provided in Subsection (3) and notwithstanding the other provisions of this chapter, the director and the state engineer may not approve a water reuse project if the water related to the water reuse project would have otherwise been discharged into a tributary of the Great Salt Lake.

(2) The state engineer may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define what is a tributary of the Great Salt Lake.

(3) This section does not apply to:

(a) a water right owned by the federal government; ~~(or)~~

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(b) a water reuse project to supply water to the Great Salt Lake

;

(c) a water reuse project approved subject to a water replacement plan; or

(d) water reuse project applications filed with the director and the state engineer before September 1, 2023, including a future renewal for the water reuse project required under Section 19-5-108.

Section 5. Section **73-3c-301** is amended to read:

### **73-3c-301. Application to the director.**

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

(b) Before applying for approval by the director of a water reuse project, the public agency shall obtain approval of the water reuse project by the state engineer under Section 73-3c-302.

(2) The Water Quality Board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the consideration and approval by the director of water reuse applications and administration of water reuse construction and operating permits.

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

(4) The [~~Water Quality Board~~] director shall issue a written decision for each water reuse application.

(5) The director may approve a water reuse project only after the state engineer has conditionally approved the water reuse project under Section 73-3c-302.

Section 6. Section **73-3c-302** is amended to read:

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

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

(b) The state engineer's approval of a water reuse project application filed under this section is conditioned on the approval of the director under Section 73-2c-301.

(2) An application for water reuse under Subsection (1) shall be made upon forms

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furnished by the state engineer and shall include:

- (a) the name of the applicant;
- (b) a description of the underlying water right;
- (c) an evaluation of the underlying water right's diversion, depletion, and return flow requirements;
- (d) the estimated quantity of water to be reused;
- (e) the location of the POTW;
- (f) the place, purpose, and extent of the proposed water reuse;
- (g) an evaluation of depletion from the hydrologic system caused by the water reuse;

and

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

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

- (4) In considering an application for water reuse, the state engineer shall comply with:
- (a) Section 73-3-6;
  - (b) Section 73-3-7;
  - (c) Section 73-3-10; and
  - (d) Section 73-3-14.

(5) In determining whether a proposed water reuse is consistent with the underlying water right, the state engineer shall conclude that a proposed water reuse is consistent with the underlying water right if:

- (a) the use of the reuse water does not enlarge the underlying water right; and
- (b) any return flow requirement of the underlying water right is satisfied.

(6) (a) The state engineer shall approve a water reuse application if the state engineer concludes that the proposed water reuse:

(i) is consistent with the underlying water right ~~(.)~~[-]; and

(ii) for an application in which the water would have otherwise been discharged into a tributary of the Great Salt Lake, includes an adequate replacement plan provided by the applicant.

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(b) The state engineer may:

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

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

(7) (a) For an application in which the water would have otherwise been discharged into a tributary of the Great Salt Lake, the applicant shall submit a water replacement plan that provides an equivalent amount of water to the Great Salt Lake.

(b) The state engineer may:

(i) approve the application in part or with conditions to assure equivalent replacement of water to the Great Salt Lake; or

(ii) deny an application if the replacement plan cannot assure equivalent replacement of water to the Great Salt Lake.

~~(7)~~ (8) A public agency with an approved reuse application shall submit a report, as directed by the state engineer, concerning the ongoing water reuse operation.

~~(8)~~ (9) The state engineer may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this chapter.

Section ~~67~~ 7. Section **73-3c-304** is amended to read:

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

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

(a) for treatment purposes;

(b) to enhance environmental quality;

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

(d) to comply with:

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

(ii) the POTW's discharge permit.

(2) Before changing the point of discharge from a POTW under Subsection (1), the [~~Water Quality Board~~] director shall consult with the state engineer.

Section ~~77~~ 8. Section **73-10g-402** is amended to read:

### **73-10g-402. Development of an integrated water assessment.**

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(1) The division shall develop and implement an integrated surface and ground water assessment for the Great Salt Lake watershed.

(2) The integrated water assessment may in relationship with the Great Salt Lake watershed:

(a) provide an assessment of the amounts and quality of available water resources;

(b) assess and forecast the quantity of water available for human, agricultural, economic development, and environmental or instream uses, and ecological needs, including:

(i) current and future water supply and demand and the factors that influence availability;

(ii) long-term trends in water availability and the causes of those trends; and

(iii) seasonal and decadal forecasts of availability;

(c) investigate the potential benefits of forest management and watershed restoration in:

(i) improving snowpack retention;

(ii) increasing soil moisture;

(iii) sustaining river flows in low flow seasons;

(iv) mitigating wildfire risk; and

(v) improving water quality;

(d) coordinate an effort to:

(i) quantify the amount of water and water quality needed to sustain high priority ecological sites in rivers, riparian, wetland, and lake systems; and

(ii) incorporate the water demand into the water supply and demand model;

(e) identify and evaluate best management practices that may be used to provide a reliable water supply that:

(i) meet water quality objectives;

(ii) meet agriculture water objectives;

(iii) accommodate anticipated growth and economic development; and

(iv) provide adequate flow to sustain the Great Salt Lake, the Great Salt Lake's wetlands, and other ecological functions in the Great Salt Lake's watershed; ~~and~~

(f) investigate the potential impacts of water reuse projects on the Great Salt Lake; and

~~(f)~~ (g) address other matters identified in the work plan.

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(3) The integrated water assessment shall include a water budget for the Great Salt Lake and the Great Salt Lake's associated wetlands, including water flows needed to maintain different lake levels under different scenarios, taking into consideration water quality, ecological needs, economic benefits, and public health benefits of the Great Salt Lake.

(4) In developing and implementing the integrated water assessment, the division shall:

(a) consult and coordinate with other state, local, regional, and federal governmental entities, water users, and other stakeholders; and

(b) coordinate with, and where appropriate, consider or incorporate other planning efforts, assessments, studies, or reports relevant to the Great Salt Lake watershed.