

**Senator Michael K. McKell** proposes the following substitute bill:

# WATER REUSE PROJECTS AMENDMENTS

## 2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Casey Snider**

Senate Sponsor: Michael K. McKell

## LONG TITLE

### **General Description:**

This bill addresses water reuse projects.

## 10      **Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses approval of water reuse projects, including providing that the director of 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 management of the Great Salt Lake; and
- ▶ makes technical changes.

## 22 Money Appropriated in this Bill:

None

## 24 Other Special Clauses:

None



26 **Utah Code Sections Affected:**27 **AMENDS:**28       **19-5-104**, as last amended by Laws of Utah 2020, Chapter 25629       **19-5-106**, as last amended by Laws of Utah 2012, Chapter 36030       **73-3c-102**, as enacted by Laws of Utah 2006, Chapter 17931       **73-3c-301**, as last amended by Laws of Utah 2008, Chapter 38232       **73-3c-302**, as last amended by Laws of Utah 2008, Chapter 38233       **73-3c-304**, as enacted by Laws of Utah 2006, Chapter 17934       **73-10g-402**, as enacted by Laws of Utah 2022, Chapter 8135 **ENACTS:**36       **73-3c-103**, Utah Code Annotated 195337 

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*Be it enacted by the Legislature of the state of Utah:*38       Section 1. Section **19-5-104** is amended to read:39       **19-5-104. Powers and duties of board.**40       (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
41       board may make rules that:

42       (a) taking into account Subsection (6):

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

45       (A) requirements pertaining to applications for a loan;

46       (B) requirements for determination of an eligible project;

47       (C) requirements for determination of the costs upon which a loan is based, which  
48       costs may include engineering, financial, legal, and administrative expenses necessary for the  
49       construction, reconstruction, and improvement of a sewage treatment plant, including a major  
50       interceptor, collection system, or other facility appurtenant to the plant;51       (D) a priority schedule for awarding loans, in which the board may consider, in  
52       addition to water pollution control needs, any financial needs relevant, including per capita  
53       cost, in making a determination of priority; and

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

55       (ii) implement the awarding of loans for nonpoint source projects pursuant to Section

57 73-10c-4.5;

58 (iii) set effluent limitations and standards subject to Section 19-5-116;  
59 (iv) implement or effectuate the powers and duties of the board; and  
60 (v) protect the public health for the design, construction, operation, and maintenance of  
61 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen  
62 pit privies;

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

67 (i) injection may result in the presence of a contaminant in underground water that  
68 supplies or can reasonably be expected to supply a public water system, as defined in Section  
69 19-4-102; and

70 (ii) the presence of the contaminant may:

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

73 (B) otherwise adversely affect the health of persons;

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

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

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

81 (ii) are constructed after May 4, 1998.

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

84 (i) managing the certification and testing program; and

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

87 (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:

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

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

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

107 (3) The board shall:

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

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

113 (c) give reasonable consideration in the exercise of its powers and duties to the  
114 economic impact of water pollution control on industry and agriculture;

115 (d) meet the requirements of federal law related to water pollution;

116 (e) establish and conduct a continuing planning process for control of water pollution,  
117 including the specification and implementation of maximum daily loads of pollutants;

118 [f] (i) approve, approve in part, approve with conditions, or deny, in writing, an

119 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and]

120 [ (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater

121 Reuse Act;]

122 [ (g) ] (f) (i) review total daily maximum load reports and recommendations for water

123 quality end points and implementation strategies developed by the division before submission

124 of the report, recommendation, or implementation strategy to the EPA;

125 (ii) disapprove, approve, or approve with conditions the staff total daily maximum load

126 recommendations; and

127 (iii) provide suggestions for further consideration to the Division of Water Quality in

128 the event a total daily maximum load strategy is rejected; and

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

130 (i) review a settlement negotiated by the director in accordance with Subsection

131 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and

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

133 (4) The board may:

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

135 (i) prohibiting or abating discharges;

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

137 treatment works;

138 (B) requiring the modification, extension, or alteration of existing treatment works as

139 specified by board rule or any parts of existing treatment works; or

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

141 (iii) setting standards of water quality, classifying waters or evidencing any other

142 determination by the board under this chapter; or

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

144 (b) advise, consult, and cooperate with another agency of the state, the federal

145 government, another state, an interstate agency, an affected group, an affected political

146 subdivision, or affected industry to further the purposes of this chapter; or

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

148 (5) In performing the duties listed in Subsections (1) through (4), the board shall give

149 priority to pollution that results in a hazard to the public health.

150 (6) The board shall take into consideration the availability of federal grants:  
151 (a) in determining eligible project costs; and  
152 (b) in establishing priorities pursuant to Subsection (1)(a)(i).

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

- 155 (a) a permit;
- 156 (b) a license;
- 157 (c) a registration;
- 158 (d) a certification; or
- 159 (e) another administrative authorization made by the director.

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

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

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

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

166 (2) The director shall:

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

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

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

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

175 (i) prohibiting or abating discharges of wastes into the waters of the state;

176 (ii) requiring the construction of new control facilities or any parts of them or the  
177 modification, extension, or alteration of existing control facilities or any parts of them, or the  
178 adoption of other remedial measures to prevent, control, or abate water pollution; or

179 (iii) prohibiting any other violation of this chapter or rules made under this chapter;

180 (e) review plans, specifications, or other data relative to pollution control systems or

181 any part of the systems provided for in this chapter;

182 (f) issue construction or operating permits for the installation or modification of  
183 treatment works or any parts of the treatment works;

184 (g) after public notice and opportunity for public hearing, issue, continue in effect,  
185 renew, revoke, modify, or deny discharge permits under reasonable conditions the board may  
186 prescribe to:

187 (i) control the management of sewage sludge; or

188 (ii) prevent or control the discharge of pollutants, including effluent limitations for the  
189 discharge of wastes into the waters of the state;

190 (h) meet the requirements of federal law related to water pollution;

191 (i) under the direction of the executive director, represent the state in all matters  
192 pertaining to water pollution, including interstate compacts and other similar agreements;

193 (j) collect and disseminate information relating to water pollution and the prevention,  
194 control, and abatement of water pollution; [and]

195 (k) subject to Subsection [19-5-104(3)(h),] 19-5-104(3)(g), settle or compromise any  
196 civil action initiated by the division to compel compliance with this chapter or the rules made  
197 under this chapter[:]; and

198 (l) (i) approve, approve in part, approve with conditions, or deny, in writing, an  
199 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and

200 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater  
201 Reuse Act.

202 (3) The director may:

203 (a) employ full-time employees as necessary to carry out the provisions of this chapter;

204 (b) subject to the provisions of this chapter, authorize any employee or representative  
205 of the department to enter, at reasonable times and upon reasonable notice, in or upon public or  
206 private property for the purposes of inspecting and investigating conditions and plant records  
207 concerning possible water pollution;

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

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

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

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

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

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

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

225 **73-3c-102. Definitions.**

226 As used in this chapter:

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

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

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

231 (i) structures with installed plumbing facilities; and

232 (ii) industrial establishments; and

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

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

238 [2] (4) "POTW" means a publicly owned treatment works as defined by Section  
239 19-5-102.

240 [3] (5) "Public agency" means a public agency as defined by Section 11-13-103 that:

241 (a) owns or operates a POTW;

242 (b) collects and transports domestic wastewater;

243 (c) holds legal title to a water right;  
244 (d) is delegated the right to the beneficial use or reuse of water by the legal title holder  
245 of the water right;

246 (e) is a water supplier; or

247 (f) sells wholesale or retail water.

248 [¶] (6) "Return flow requirement" means return flow required under a water right.

249 [§] (7) (a) "Reuse authorization contract" means a contract or contracts among:

250 (i) a public agency proposing a water reuse project;

251 (ii) the owner or operator of a POTW that treats domestic wastewater proposed for use  
252 in a reuse project;

253 (iii) the owner of a domestic wastewater collection or transportation system if the reuse  
254 project will divert domestic wastewater directly from that entity's collection or transportation  
255 system;

256 (iv) the legal title holder of the water right designated for use in the reuse project,  
257 unless the legal title holder of the water right has delegated to another the right to the beneficial  
258 use or reuse of the water;

259 (v) each water supplier not holding legal title to the water right designated for use in  
260 the reuse project that sells or delivers water under the water right designated for use in the  
261 reuse project;

262 (vi) each entity that will engage in the wholesale or retail sale of water from the water  
263 reuse project; and

264 (vii) the retail water supplier retailing water that will be replaced by reuse water  
265 supplied under the proposed reuse project.

266 (b) A reuse authorization contract shall:

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

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

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

274 [77] (9) (a) "Water reuse project" or "project" means a project for the reuse of  
275 domestic wastewater that requires approval by the [Water Quality Board in accordance with  
276 Section 19-5-104] director under Section 19-5-106 and the state engineer under Section  
277 73-3c-302.

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

280 [78] (10) "Water right" means:

281 (a) a right to use water evidenced by any means identified in Section 73-1-10; or  
282 (b) a right to use water under an approved application:  
283 (i) to appropriate;  
284 (ii) for a change of use; or  
285 (iii) for the exchange of water.

286 [79] (11) "Water supplier" means an entity engaged in the delivery of water for  
287 municipal purposes.

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

289 **73-3c-103. Water reuse projects and the Great Salt Lake -- Exception.**

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

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

296 (3) This section does not apply to:

297 (a) a water right owned by the federal government;  
298 (b) a water reuse project to supply water to the Great Salt Lake;  
299 (c) a water reuse project approved subject to a water replacement plan; or  
300 (d) water reuse project applications filed with the director and the state engineer before  
301 November 1, 2023, including any future renewals required under Section 19-5-108 for the  
302 water reuse project that are submitted after November 1, 2023.

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

304 **73-3c-301. Application to the director.**

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

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

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

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

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

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

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

322 **73-3c-302. Application to the state engineer.**

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

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

327 (2) An application for water reuse under Subsection (1) shall be made upon forms  
328 furnished by the state engineer and shall include:

329 (a) the name of the applicant;

330 (b) a description of the underlying water right;

331 (c) an evaluation of the underlying water right's diversion, depletion, and return flow  
332 requirements;

333 (d) the estimated quantity of water to be reused;

334 (e) the location of the POTW;

335 (f) the place, purpose, and extent of the proposed water reuse;

336 (g) an evaluation of depletion from the hydrologic system caused by the water reuse;  
337 and

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

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

343 (4) In considering an application for water reuse, the state engineer shall comply with:

- 344 (a) Section 73-3-6;
- 345 (b) Section 73-3-7;
- 346 (c) Section 73-3-10; and
- 347 (d) Section 73-3-14.

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

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

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

- 355 (i) is consistent with the underlying water right[:]; and
- 356 (ii) for an application in which the water would have otherwise been discharged into a  
357 tributary of the Great Salt Lake, includes an adequate replacement plan provided by the  
358 applicant.

359 (b) The state engineer may:

360 (i) deny an application [for water reuse] if the proposed water reuse is inconsistent with  
361 the underlying water right; or

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

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

367           (b) The state engineer may:  
368            (i) approve the application in part or with conditions to assure equivalent replacement  
369 of water to the Great Salt Lake; or  
370            (ii) deny an application if the replacement plan cannot assure equivalent replacement of  
371 water to the Great Salt Lake.

372           [~~(7)~~] (8) A public agency with an approved reuse application shall submit a report, as  
373 directed by the state engineer, concerning the ongoing water reuse operation.

374           [~~(8)~~] (9) The state engineer may make rules in accordance with Title 63G, Chapter 3,  
375 Utah Administrative Rulemaking Act, to implement the provisions of this chapter.

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

377           **73-3c-304. Change in point of discharge.**

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

380            (a) for treatment purposes;  
381            (b) to enhance environmental quality;  
382            (c) to protect public health, safety, or welfare; or  
383            (d) to comply with:  
384              (i) rules created by the Water Quality Board in accordance with Section **19-5-104**; or  
385              (ii) the POTW's discharge permit.

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

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

389           **73-10g-402. Development of an integrated water assessment.**

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

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

394            (a) provide an assessment of the amounts and quality of available water resources;  
395            (b) assess and forecast the quantity of water available for human, agricultural,  
396 economic development, and environmental or instream uses, and ecological needs, including:  
397              (i) current and future water supply and demand and the factors that influence

398 availability;

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

400 (iii) seasonal and decadal forecasts of availability;

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

402 in:

403 (i) improving snowpack retention;

404 (ii) increasing soil moisture;

405 (iii) sustaining river flows in low flow seasons;

406 (iv) mitigating wildfire risk; and

407 (v) improving water quality;

408 (d) coordinate an effort to:

409 (i) quantify the amount of water and water quality needed to sustain high priority

410 ecological sites in rivers, riparian, wetland, and lake systems; and

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

412 (e) identify and evaluate best management practices that may be used to provide a

413 reliable water supply that:

414 (i) meet water quality objectives;

415 (ii) meet agriculture water objectives;

416 (iii) accommodate anticipated growth and economic development; and

417 (iv) provide adequate flow to sustain the Great Salt Lake, the Great Salt Lake's

418 wetlands, and other ecological functions in the Great Salt Lake's watershed; [and]

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

420 [(f)] (g) address other matters identified in the work plan.

421 (3) The integrated water assessment shall include a water budget for the Great Salt

422 Lake and the Great Salt Lake's associated wetlands, including water flows needed to maintain

423 different lake levels under different scenarios, taking into consideration water quality,

424 ecological needs, economic benefits, and public health benefits of the Great Salt Lake.

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

426 (a) consult and coordinate with other state, local, regional, and federal governmental

427 entities, water users, and other stakeholders; and

428 (b) coordinate with, and where appropriate, consider or incorporate other planning

429 efforts, assessments, studies, or reports relevant to the Great Salt Lake watershed.