

Senator David P. Hinkins proposes the following substitute bill:

SECONDARY WATER AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions related to secondary water.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ modifies who may meter at strategic points of a system as approved by the state engineer;
- ▶ changes certain caps on grants for secondary water metering; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-10-34, as last amended by Laws of Utah 2023, Chapter 260

73-10-34.5, as last amended by Laws of Utah 2023, Chapter 260



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

27 Section 1. Section **73-10-34** is amended to read:

28 **73-10-34. Secondary water metering -- Loans and grants.**

29 (1) As used in this section:

30 (a) "Agriculture use" means water used on land assessed under Title 59, Chapter 2, Part
31 5, Farmland Assessment Act.

32 (b) (i) "Commercial user" means a secondary water user that is a place of business.

33 (ii) "Commercial user" does not include a multi-family residence, an agricultural user,
34 or a customer that falls within the industrial or institutional classification.

35 (c) "Critical area" means an area:

36 (i) serviced by one of the four largest water conservancy districts, as defined in Section
37 17B-1-102, measured by operating budgets; or

38 (ii) within the Great Salt Lake basin, which includes:

39 (A) the surveyed meander line of the Great Salt Lake;

40 (B) the drainage areas of the Bear River or the Bear River's tributaries;

41 (C) the drainage areas of Bear Lake or Bear Lake's tributaries;

42 (D) the drainage areas of the Weber River or the Weber River's tributaries;

43 (E) the drainage areas of the Jordan River or the Jordan River's tributaries;

44 (F) the drainage areas of Utah Lake or Utah Lake's tributaries;

45 (G) other water drainages lying between the Bear River and the Jordan River that are
46 tributary to the Great Salt Lake and not included in the drainage areas described in Subsections
47 (1)(c)(ii)(B) through (F); and

48 (H) the drainage area of Tooele Valley.

49 ~~(d)~~ (d) "Full metering" means that use of secondary water is accurately metered by a
50 meter that is installed and maintained on every secondary water connection of a secondary
51 water supplier.

52 ~~(e)~~ (e) (i) "Industrial user" means a secondary water user that manufactures or
53 produces materials.

54 (ii) "Industrial user" includes a manufacturing plant, an oil and gas producer, and a
55 mining company.

56 ~~(f)~~ (f) (i) "Institutional user" means a secondary water user that is dedicated to public

57 service, regardless of ownership.

58 (ii) "Institutional user" includes a school, church, hospital, park, golf course, and
59 government facility.

60 ~~[(f)]~~ (g) "Power generation use" means water used in the production of energy, such as
61 use in an electric generation facility, natural gas refinery, or coal processing plant.

62 ~~[(g)]~~ (h) (i) "Residential user" means a secondary water user in a residence.

63 (ii) "Residential user" includes a single-family or multi-family home, apartment,
64 duplex, twin home, condominium, or planned community.

65 ~~[(h)]~~ (i) "Secondary water" means water that is:

66 (i) not culinary or water used on land assessed under Title 59, Chapter 2, Part 5,
67 Farmland Assessment Act; and

68 (ii) delivered to and used by an end user for the irrigation of landscaping or a garden.

69 ~~[(i)]~~ (j) "Secondary water connection" means the location at which the water leaves the
70 secondary water supplier's pipeline and enters into the remainder of the pipes that are owned by
71 another person to supply water to an end user.

72 ~~[(j)]~~ (k) "Secondary water supplier" means an entity that supplies pressurized
73 secondary water.

74 ~~[(k)]~~ (l) "Small secondary water retail supplier" means an entity that:

75 (i) supplies pressurized secondary water only to the end user of the secondary water;
76 and

77 (ii) (A) is a city, town, or metro township; or

78 (B) supplies 5,000 or fewer secondary water connections.

79 (2) (a) (i) A secondary water supplier that supplies secondary water within a county of
80 the first or second class and begins design work for new service on or after April 1, 2020, to a
81 commercial, industrial, institutional, or residential user shall meter the use of pressurized
82 secondary water by the users receiving that new service.

83 (ii) A secondary water supplier that supplies secondary water within a county of the
84 third, fourth, fifth, or sixth class and begins design work for new service on or after May 4,
85 2022, to a commercial, industrial, institutional, or residential user shall meter the use of
86 pressurized secondary water by the users receiving that new service.

87 (b) By no later than January 1, 2030, a secondary water supplier shall install and

88 maintain a meter of the use of pressurized secondary water by each user receiving secondary
89 water service from the secondary water supplier.

90 (c) Beginning January 1, 2022, a secondary water supplier shall establish a meter
91 installation reserve for metering installation and replacement projects.

92 (d) A secondary water supplier, including a small secondary water retail supplier, may
93 not raise the rates charged for secondary water:

94 (i) by more than 10% in a calendar year for costs associated with metering secondary
95 water unless the rise in rates is necessary because the secondary water supplier experiences a
96 catastrophic failure or other similar event; or

97 (ii) unless, before raising the rates on the end user, the entity charging the end user
98 provides a statement explaining the basis for why the needs of the secondary water supplier
99 required an increase in rates.

100 (e) (i) A secondary water supplier that provides pressurized secondary water to a
101 commercial, industrial, institutional, or residential user shall develop a plan, or if the secondary
102 water supplier previously filed a similar plan, update the plan for metering the use of the
103 pressurized water.

104 (ii) The plan required by this Subsection (2)(e) shall be filed or updated with the
105 Division of Water Resources by no later than December 31, 2025, and address the process the
106 secondary water supplier will follow to implement metering, including:

107 (A) the costs of full metering by the secondary water supplier;

108 (B) how long it would take the secondary water supplier to complete full metering,
109 including an anticipated beginning date and completion date, except a secondary water supplier
110 shall achieve full metering by no later than January 1, 2030; and

111 (C) how the secondary water supplier will finance metering.

112 (3) A secondary water supplier shall on or before March 31 of each year, report to the
113 Division of Water Rights:

114 (a) for commercial, industrial, institutional, and residential users whose pressurized
115 secondary water use is metered, the number of acre feet of pressurized secondary water the
116 secondary water supplier supplied to the commercial, industrial, institutional, and residential
117 users during the preceding 12-month period;

118 (b) the number of secondary water meters within the secondary water supplier's service

- 119 boundary;
- 120 (c) a description of the secondary water supplier's service boundary;
- 121 (d) the number of secondary water connections in each of the following categories
- 122 through which the secondary water supplier supplies pressurized secondary water:
- 123 (i) commercial;
- 124 (ii) industrial;
- 125 (iii) institutional; and
- 126 (iv) residential;
- 127 (e) the total volume of water that the secondary water supplier receives from the
- 128 secondary water supplier's sources; and
- 129 (f) the dates of service during the preceding 12-month period in which the secondary
- 130 water supplier supplied pressurized secondary water.
- 131 (4) (a) Beginning July 1, 2019, the Board of Water Resources may make up to
- 132 \$10,000,000 in low-interest loans available each year:
- 133 (i) from the Water Resources Conservation and Development Fund, created in Section
- 134 [73-10-24](#); and
- 135 (ii) for financing the cost of secondary water metering.
- 136 (b) The Division of Water Resources and the Board of Water Resources shall make
- 137 rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 138 establishing the criteria and process for receiving a loan described in this Subsection (4), except
- 139 the rules may not include prepayment penalties.
- 140 (5) (a) Beginning July 1, 2021, subject to appropriation, the Division of Water
- 141 Resources may make matching grants each year for financing the cost of secondary water
- 142 metering for a commercial, industrial, institutional, or residential user by a small secondary
- 143 water retail supplier that:
- 144 (i) is not for new service described in Subsection (2)(a); and
- 145 (ii) matches the amount of the grant.
- 146 (b) For purposes of issuing grants under this section, the division shall prioritize the
- 147 small secondary water retail suppliers that can demonstrate the greatest need or greatest
- 148 inability to pay the entire cost of installing secondary water meters.
- 149 (c) The amount of a grant under this Subsection (5) may not:

150 (i) exceed 50% of the small secondary water retail supplier's cost of installing
151 secondary water meters; or
152 (ii) supplant federal, state, or local money previously allocated to pay the small
153 secondary water retail supplier's cost of installing secondary water meters.
154 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
155 Board of Water Resources shall make rules establishing:
156 (i) the procedure for applying for a grant under this Subsection (5); and
157 (ii) how a small secondary water retail supplier can establish that the small secondary
158 water retail supplier meets the eligibility requirements of this Subsection (5).
159 (6) Nothing in this section affects a water right holder's obligation to measure and
160 report water usage as described in Sections 73-5-4 and 73-5-8.
161 (7) If a secondary water supplier fails to comply with Subsection (2)(b), the secondary
162 water supplier:
163 (a) beginning January 1, 2030, may not receive state money for water related purposes
164 until the secondary water supplier completes full metering; and
165 (b) is subject to an enforcement action of the state engineer in accordance with
166 Subsection (8).
167 (8) (a) (i) The state engineer shall commence an enforcement action under this
168 Subsection (8) if the state engineer receives a referral from the director of the Division of
169 Water Resources.
170 (ii) The director of the Division of Water Resources shall submit a referral to the state
171 engineer if the director:
172 (A) finds that a secondary water supplier fails to fully meter secondary water as
173 required by this section; and
174 (B) determines an enforcement action is necessary to conserve or protect a water
175 resource in the state.
176 (b) To commence an enforcement action under this Subsection (8), the state engineer
177 shall issue a notice of violation that includes notice of the administrative fine to which a
178 secondary water supplier is subject.
179 (c) The state engineer's issuance and enforcement of a notice of violation is exempt
180 from Title 63G, Chapter 4, Administrative Procedures Act.

181 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
182 state engineer shall make rules necessary to enforce a notice of violation, that includes:

183 (i) provisions consistent with this Subsection (8) for enforcement of the notice if a
184 secondary water supplier to whom a notice is issued fails to respond to the notice or abate the
185 violation;

186 (ii) the right to a hearing, upon request by a secondary water supplier against whom the
187 notice is issued; and

188 (iii) provisions for timely issuance of a final order after the secondary water supplier to
189 whom the notice is issued fails to respond to the notice or abate the violation, or after a hearing
190 held under Subsection (8)(d)(ii).

191 (e) A person may not intervene in an enforcement action commenced under this
192 section.

193 (f) After issuance of a final order under rules made pursuant to Subsection (8)(d), the
194 state engineer shall serve a copy of the final order on the secondary water supplier against
195 whom the order is issued by:

196 (i) personal service under Utah Rules of Civil Procedure, Rule 5; or

197 (ii) certified mail.

198 (g) (i) The state engineer's final order may be reviewed by trial de novo by the district
199 court in Salt Lake County or the county where the violation occurred.

200 (ii) A secondary water supplier shall file a petition for judicial review of the state
201 engineer's final order issued under this section within 20 days from the day on which the final
202 order was served on the secondary water supplier.

203 (h) The state engineer may bring suit in a court of competent jurisdiction to enforce a
204 final order issued under this Subsection (8).

205 (i) If the state engineer prevails in an action brought under Subsection (8)(g) or (h), the
206 state may recover court costs and a reasonable attorney fee.

207 (j) As part of a final order issued under this Subsection (8), the state engineer shall
208 order that a secondary water supplier to whom an order is issued pay an administrative fine
209 equal to:

210 (i) \$10 for each non-metered secondary water connection of the secondary water
211 supplier for failure to comply with full metering by January 1, 2030;

212 (ii) \$20 for each non-metered secondary water connection of the secondary water
213 supplier for failure to comply with full metering by January 1, 2031;

214 (iii) \$30 for each non-metered secondary water connection of the secondary water
215 supplier for failure to comply with full metering by January 1, 2032;

216 (iv) \$40 for each non-metered secondary water connection of the secondary water
217 supplier for failure to comply with full metering by January 1, 2033; and

218 (v) \$50 for each non-metered secondary water connection of the secondary water
219 supplier for failure to comply with full metering by January 1, 2034, and for each subsequent
220 year the secondary water supplier fails to comply with full metering.

221 (k) Money collected under this Subsection (8) shall be deposited into the Water
222 Resources Conservation and Development Fund, created in Section [73-10-24](#).

223 (9) A secondary water supplier located within a county of the fifth or sixth class is
224 exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8) if:

225 (a) the owner or operator of the secondary water supplier seeks an exemption under
226 this Subsection (9) by establishing with the Division of Water Resources that the cost of
227 purchasing, installing, and upgrading systems to accept meters exceeds 25% of the total
228 operating budget of the owner or operator of the secondary water supplier;

229 (b) the secondary water supplier agrees to not add a new secondary water connection to
230 the secondary water supplier's system on or after May 4, 2022;

231 (c) within six months of when the secondary water supplier seeks an exemption under
232 Subsection (9)(a), the secondary water supplier provides to the Division of Water Resources a
233 plan for conservation within the secondary water supplier's service area that does not require
234 metering;

235 (d) the secondary water supplier annually reports to the Division of Water Resources
236 on the results of the plan described in Subsection (9)(c); and

237 (e) the secondary water supplier submits to evaluations by the Division of Water
238 Resources of the effectiveness of the plan described in Subsection (9)(c).

239 (10) A secondary water supplier is exempt from Subsections (2)(a), (2)(b), (2)(c),
240 (2)(e), (7), and (8) to the extent that the secondary water supplier:

241 (a) is unable to obtain a meter that a meter manufacturer will warranty because of the
242 water quality within a specific location served by the secondary water supplier;

243 (b) submits reasonable proof to the Division of Water Resources that the secondary
244 water supplier is unable to obtain a meter as described in Subsection (10)(a);

245 (c) within six months of when the secondary water supplier submits reasonable proof
246 under Subsection (10)(b), provides to the Division of Water Resources a plan for conservation
247 within the secondary water supplier's service area that does not require metering;

248 (d) annually reports to the Division of Water Resources on the results of the plan
249 described in Subsection (10)(c); and

250 (e) submits to evaluations by the Division of Water Resources of the effectiveness of
251 the plan described in Subsection (10)(c).

252 (11) A secondary water supplier that is located within a critical management area that
253 is subject to a groundwater management plan adopted or amended under Section 73-5-15 on or
254 after May 1, 2006, is exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8).

255 (12) If a secondary water supplier is required to have a water conservation plan under
256 Section 73-10-32, that water conservation plan satisfies the requirements of Subsection (9)(c)
257 or (10)(c).

258 (13) (a) Notwithstanding the other provisions of this section and unless exempt under
259 Subsection (9), (10), or (11), to comply with this section, a secondary water supplier is not
260 required to meter every secondary water connection of the secondary water supplier's system,
261 but shall meter at strategic points of the system as approved by the state engineer under this
262 Subsection (13) if:

263 (i) the system has no storage and relies on stream flow;

264 (ii) (A) the majority of secondary water users on the system are associated with
265 agriculture use or power generation use; and

266 (B) less than 50% of the secondary water is used by residential secondary water users;
267 or

268 (iii) the system has a mix of pressurized lines and open ditches and:

269 (A) 1,000 or fewer users~~;~~ and] if any part of the system is within a critical area; or

270 (B) ~~[a mix of pressurized lines and open ditches:]~~ 2,500 or fewer users for a system
271 not described in Subsection (13)(a)(iii)(A).

272 (b) (i) A secondary water supplier may obtain the approval by the state engineer of
273 strategic points where metering is to occur as required under this Subsection (13) by filing an

274 application with the state engineer in the form established by the state engineer.

275 (ii) The state engineer may by rule, made in accordance with Title 63G, Chapter 3,
276 Utah Administrative Rulemaking Act, establish procedures for approving strategic points for
277 metering under this Subsection (13).

278 Section 2. Section **73-10-34.5** is amended to read:

279 **73-10-34.5. Grant money for existing secondary water metering to facilitate full**
280 **metering -- Other grants.**

281 (1) As used in this section:

282 (a) "Applicant" means a secondary water supplier or group of secondary water
283 suppliers that applies for a grant under this section.

284 (b) "Board" means the Board of Water Resources.

285 (c) "Division" means the Division of Water Resources.

286 (d) "Project" means the purchase or installation of a meter for a secondary water
287 system that as of May 4, 2022, provides secondary water service that is not metered.

288 (e) "Secondary water" means the same as that term is defined in Section [73-10-34](#).

289 (f) "Secondary water connection" means the same as that term is defined in Section
290 [73-10-34](#).

291 (g) "Secondary water supplier" means the same as that term is defined in Section
292 [73-10-34](#).

293 (2) (a) The board may issue grants in an amount appropriated by the Legislature in
294 accordance with this section to an applicant to fund projects for meters on secondary water
295 systems that before May 4, 2022, provide secondary water service that is not metered.

296 (b) The board may not issue a grant under this section to fund:

297 (i) metering of secondary water for service that begins on or after May 4, 2022; or

298 (ii) the replacement or repair of an existing secondary water meter.

299 (c) Notwithstanding the other provisions of this section, the board may issue a grant
300 under this section to a secondary water supplier to reimburse the secondary water supplier for
301 the costs incurred by the secondary water supplier that are associated with installing meters on
302 a secondary water system on or after March 3, 2021, but before May 4, 2022, except that the
303 grant issued under this Subsection (2)(c):

304 (i) shall be included in calculating the total grant amount under Subsections (3)(a)

305 through (c);

306 (ii) may not exceed 70% of the costs associated with a project described in this
307 Subsection (2)(c), including installation and purchase of meters; and

308 (iii) shall comply with Subsection (6).

309 (3) (a) A secondary water supplier with 7,000 secondary water connections or less is
310 eligible for a total grant amount under this section of up to [~~\$5,000,000~~] \$10,000,000.

311 (b) A secondary water supplier with more than 7,000 secondary water connections is
312 eligible for a total grant amount under this section of up to [~~\$10,000,000~~] \$20,000,000.

313 (c) If a secondary water supplier applies for a grant as part of a group of secondary
314 water suppliers, the total grant amount described in Subsection (3)(a) or (b) applies to each
315 member of the group and is not based on the number of secondary water connections of the
316 entire group.

317 (d) (i) Subject to the other provisions of this section, a grant may not exceed the
318 following amounts for the costs associated with a project, including installation and purchase
319 of meters:

320 (A) for calendar year 2022, 70% of the costs of a project;

321 (B) for calendar year 2023, 70% of the costs of a project;

322 (C) for calendar year 2024, 65% of the costs of a project;

323 (D) for calendar year 2025, 60% of the costs of a project; and

324 (E) for calendar year 2026, 50% of the costs of a project.

325 (ii) Beginning with calendar year 2027, a grant under this section shall consist of
326 providing a meter or funding to obtain a meter, which may not exceed the following for costs
327 associated with the project:

328 (A) for calendar year 2027, 40% of the costs of a project;

329 (B) for calendar year 2028, 30% of the costs of a project;

330 (C) for calendar year 2029, 20% of the costs of a project; and

331 (D) for calendar year 2030, 10% of the costs of a project.

332 (e) A secondary water supplier may pay the secondary water supplier's portion of the
333 costs of a project through a loan from the board under Section [73-10-34](#) by filing a separate
334 application with the board.

335 (f) A meter purchased with grant money received under this section shall allow for data

336 communication between the meter and other devices designed to manage use of secondary
337 water that is:

- 338 (i) open and available to an end user; and
- 339 (ii) open so that it can integrate with third-party providers.

340 (4) (a) (i) To obtain a grant under this section, an applicant shall submit an application
341 with the division during a period of time designated by the board.

342 (ii) If there remains money described in Subsection (2) after the grants for applications
343 submitted during the time period described in this Subsection (4)(a) are awarded, the board
344 may designate one or more additional time periods so that the entire amount described in
345 Subsection (2) is awarded by December 31, 2024.

346 (b) An application submitted to the division shall include:

- 347 (i) a detailed project cost estimate including meter costs and installation costs;
- 348 (ii) a total number of pressurized secondary water connections in the applicable
349 secondary water supplier's system;

350 (iii) the number of meters to be installed under the grant;

351 (iv) a detailed estimated secondary water use reduction including:

352 (A) average lot size calculations;

353 (B) average irrigated acreage; and

354 (C) estimated water applied before the project versus after completion of the project;

355 (v) the timeline for purchase and installation of meters under the project;

356 (vi) an agreement to:

357 (A) provide an educational component for end users as determined by the division by
358 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
359 either on a monthly statement or by a customer specific Internet portal that provides
360 information on the customer's usage more frequently than monthly; or

361 (B) bill according to usage using a tiered conservation rate and provide an educational
362 component described in Subsection (4)(b)(vi)(A); and

363 (vii) additional information the board considers helpful.

364 (5) (a) The division shall:

365 (i) review and prioritize an application submitted under Subsection (4); and

366 (ii) recommend to the board which applicants should be awarded a grant under this

367 section.

368 (b) In prioritizing applications under this Subsection (5), the division shall rank the
369 applicants on the basis of the following weighted factors:

370 (i) 60% weight based on the ratio of estimated water use reduction divided by total
371 state investment;

372 (ii) 20% weight based on an applicant facing current or potential water shortages when
373 installation of meters and subsequent water use reductions will result in delaying or eliminating
374 the need for new water development; and

375 (iii) 20% weight based on a project's accelerated construction schedule, prompt start,
376 and prompt finish.

377 (6) As a condition of receiving a grant under this section, the recipient shall enter into
378 an agreement with the board to use the grant money. The agreement shall:

379 (a) be executed by no later than December 31, 2024; and

380 (b) require that the grant money be spent by December 31, 2026, and the project
381 completed under the terms of the grant.

382 (7) Notwithstanding the other provisions of this section, the board may issue a grant to
383 a secondary water supplier:

384 (a) that installed meters on secondary water connections before May 4, 2022;

385 (b) that has not otherwise received a grant under this section;

386 (c) for the purpose of water conservation; and

387 (d) in an amount not to exceed \$2,000,000.

388 (8) Notwithstanding the other provisions of this section, the board may issue a grant to
389 or convert a grant previously issued to a secondary water supplier described in Subsection
390 [73-10-34\(13\)\(a\)\(iii\)](#) from money appropriated under this section to fund a project that is an
391 alternative to metering, such as lining ditches or improving head gates, if the secondary water
392 supplier establishes to the satisfaction of the board that the alternative project will conserve
393 more water than is expected to be conserved through metering.

394 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
395 consistent with this section, the board may make rules establishing the procedure for applying
396 for a grant under this section.

397 Section 3. **Effective date.**

398

This bill takes effect on May 1, 2024.