

## SB0125S01 compared with SB0125

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inserted text shows text that was not in SB0125 but was inserted into SB0125S01.

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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: { } \_\_\_\_\_

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#### 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:

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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

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

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

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

(1) As used in this section:

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

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

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

(c) "Critical area" means an area:

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

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

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

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

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

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

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

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

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

(H) the drainage area of Tooele Valley.

[(c)] (d) "Full metering" means that use of secondary water is accurately metered by a meter that is installed and maintained on every secondary water connection of a secondary

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water supplier.

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

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

~~(e)~~ (f) (i) "Institutional user" means a secondary water user that is dedicated to public service, regardless of ownership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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secondary water by the users receiving that new service.

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

(b) By no later than January 1, 2030, a secondary water supplier shall install and maintain a meter of the use of pressurized secondary water by each user receiving secondary water service from the secondary water supplier.

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

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

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

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

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

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

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

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

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

(3) A secondary water supplier shall on or before March 31 of each year, report to the

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Division of Water Rights:

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

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

(c) a description of the secondary water supplier's service boundary;

(d) the number of secondary water connections in each of the following categories through which the secondary water supplier supplies pressurized secondary water:

(i) commercial;

(ii) industrial;

(iii) institutional; and

(iv) residential;

(e) the total volume of water that the secondary water supplier receives from the secondary water supplier's sources; and

(f) the dates of service during the preceding 12-month period in which the secondary water supplier supplied pressurized secondary water.

(4) (a) Beginning July 1, 2019, the Board of Water Resources may make up to \$10,000,000 in low-interest loans available each year:

(i) from the Water Resources Conservation and Development Fund, created in Section 73-10-24; and

(ii) for financing the cost of secondary water metering.

(b) The Division of Water Resources and the Board of Water Resources shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing the criteria and process for receiving a loan described in this Subsection (4), except the rules may not include prepayment penalties.

(5) (a) Beginning July 1, 2021, subject to appropriation, the Division of Water Resources may make matching grants each year for financing the cost of secondary water metering for a commercial, industrial, institutional, or residential user by a small secondary water retail supplier that:

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(i) is not for new service described in Subsection (2)(a); and

(ii) matches the amount of the grant.

(b) For purposes of issuing grants under this section, the division shall prioritize the small secondary water retail suppliers that can demonstrate the greatest need or greatest inability to pay the entire cost of installing secondary water meters.

(c) The amount of a grant under this Subsection (5) may not:

(i) exceed 50% of the small secondary water retail supplier's cost of installing secondary water meters; or

(ii) supplant federal, state, or local money previously allocated to pay the small secondary water retail supplier's cost of installing secondary water meters.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Board of Water Resources shall make rules establishing:

(i) the procedure for applying for a grant under this Subsection (5); and

(ii) how a small secondary water retail supplier can establish that the small secondary water retail supplier meets the eligibility requirements of this Subsection (5).

(6) Nothing in this section affects a water right holder's obligation to measure and report water usage as described in Sections 73-5-4 and 73-5-8.

(7) If a secondary water supplier fails to comply with Subsection (2)(b), the secondary water supplier:

(a) beginning January 1, 2030, may not receive state money for water related purposes until the secondary water supplier completes full metering; and

(b) is subject to an enforcement action of the state engineer in accordance with Subsection (8).

(8) (a) (i) The state engineer shall commence an enforcement action under this Subsection (8) if the state engineer receives a referral from the director of the Division of Water Resources.

(ii) The director of the Division of Water Resources shall submit a referral to the state engineer if the director:

(A) finds that a secondary water supplier fails to fully meter secondary water as required by this section; and

(B) determines an enforcement action is necessary to conserve or protect a water

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resource in the state.

(b) To commence an enforcement action under this Subsection (8), the state engineer shall issue a notice of violation that includes notice of the administrative fine to which a secondary water supplier is subject.

(c) The state engineer's issuance and enforcement of a notice of violation is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

(ii) certified mail.

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

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

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

(i) If the state engineer prevails in an action brought under Subsection (8)(g) or (h), the

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state may recover court costs and a reasonable attorney fee.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

or

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

(A) ~~{1,000}~~ ~~{2,500 or fewer users, and~~

~~(B) } or fewer users[; and] if any part of the system is within a critical area; or~~

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

(b) (i) A secondary water supplier may obtain the approval by the state engineer of strategic points where metering is to occur as required under this Subsection (13) by filing an application with the state engineer in the form established by the state engineer.

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) shall comply with Subsection (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A meter purchased with grant money received under this section shall allow for data communication between the meter and other devices designed to manage use of secondary water that is:

(i) open and available to an end user; and

(ii) open so that it can integrate with third-party providers.

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

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

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

(i) a detailed project cost estimate including meter costs and installation costs;

(ii) a total number of pressurized secondary water connections in the applicable secondary water supplier's system;

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

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

(A) average lot size calculations;

(B) average irrigated acreage; and

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

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

(vi) an agreement to:

(A) provide an educational component for end users as determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, either on a monthly statement or by a customer specific Internet portal that provides

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information on the customer's usage more frequently than monthly; or

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

(vii) additional information the board considers helpful.

(5) (a) The division shall:

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

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

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

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

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

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

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

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

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

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

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

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

(c) for the purpose of water conservation; and

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

(8) Notwithstanding the other provisions of this section, the board may issue a grant to or convert a grant previously issued to a secondary water supplier described in Subsection 73-10-34(13)(a)(iii) from money appropriated under this section to fund a project that is an

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alternative to metering, such as lining ditches or improving head gates, if the secondary water supplier establishes to the satisfaction of the board that the alternative project will conserve more water than is expected to be conserved through metering.

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

Section ~~{2}~~3. **Effective date.**

This bill takes effect on May 1, 2024.