

1 **SECONDARY WATER METERING AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Val L. Peterson**

5 Senate Sponsor: Michael K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses secondary water metering.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses definitions;
- 13 ▶ imposes requirements related to metering pressurized secondary water;
- 14 ▶ provides for penalties for failure to comply with metering requirements;
- 15 ▶ provides for exemptions;
- 16 ▶ provides for grants to fund metering of certain pressurized secondary water services;
- 17 ▶ allows for water conservation grants under certain circumstances;
- 18 ▶ addresses rulemaking authority; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **73-10-34**, as last amended by Laws of Utah 2021, Chapter 354

27 ENACTS:

28 **73-10-34.5**, Utah Code Annotated 1953

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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) (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.

(b) "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 water supplier.

~~(b)~~ (c) (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.

~~(c)~~ (d) (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.

~~(d)~~ (e) (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.

~~(e)~~ (f) "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.

(g) "Secondary water connection" means the location at which the water leaves the

56 secondary water supplier's pipeline and enters into the remainder of the pipes that are owned by
57 another person to supply water to an end user.

58 ~~[(f)]~~ (h) "Secondary water supplier" means an entity that supplies pressurized
59 secondary water.

60 ~~[(g)]~~ (i) "Small secondary water retail supplier" means an entity that:

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

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

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

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

69 ~~(ii)~~ A secondary water supplier that supplies secondary water within a county of the
70 third, fourth, fifth, or sixth class and begins design work for new service on or after May 4,
71 2022, to a commercial, industrial, institutional, or residential user shall meter the use of
72 pressurized secondary water by the users receiving that new service.

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

76 ~~[(b)]~~ (c) Beginning January 1, 2022, a secondary water supplier shall establish a meter
77 installation reserve for metering installation and replacement projects.

78 ~~[(e)]~~ (d) A secondary water supplier, including a small secondary water retail supplier,
79 may not raise the rates charged for secondary water:

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

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

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

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

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

94 (B) how long it would take the secondary water supplier to complete full metering [~~by~~
95 ~~no later than December 31, 2040~~], including an anticipated beginning date and completion
96 date, except a secondary water supplier shall achieve full metering by no later than January 1,
97 2030; and

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

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

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

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

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

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

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

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

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

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

143 (i) the procedure for applying for a grant under this Subsection (5); and
144 (ii) how a small secondary water retail supplier can establish that the small secondary
145 water retail supplier meets the eligibility requirements of this Subsection (5).

146 ~~[(6) This section does not apply to a secondary water supplier to the extent that:]~~
147 ~~[(a) the secondary water supplier supplies secondary water within a county of the third,~~
148 ~~fourth, fifth, or sixth class; or]~~

149 ~~[(b) there is no meter that a meter manufacturer will warranty because of the water~~
150 ~~quality within a specific location.]~~

151 ~~[(7)]~~ (6) Nothing in this section affects a water right holder's obligation to measure and
152 report water usage as described in Sections 73-5-4 and 73-5-8.

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

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

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

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

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

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

166 (B) determines an enforcement action is necessary to conserve or protect a water
167 resource in the state.

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

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

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

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

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

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

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

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

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

189 (ii) certified mail.

190 (g) (i) The state engineer's final order may be reviewed by trial de novo by the district

191 court in Salt Lake County or the county where the violation occurred.

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

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

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

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

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

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

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

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

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

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

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

217 (a) the owner or operator of the secondary water supplier seeks an exemption under

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

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

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

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

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

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

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

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

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

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

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

244 (11) A secondary water supplier that is located within a critical management area that

245 is subject to a groundwater management plan adopted or amended under Section 73-5-15 on or
246 after May 1, 2006, is exempt from Subsections (2)(a), (2)(b), (2)(c), (2)(e), (7), and (8).

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

250 Section 2. Section 73-10-34.5 is enacted to read:

251 **73-10-34.5. Grant money for existing secondary water metering to facilitate full**
252 **metering -- Other grants.**

253 (1) As used in this section:

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

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

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

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

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

261 (f) "Secondary water connection" means the same as that term is defined in Section
262 73-10-34.

263 (g) "Secondary water supplier" means the same as that term is defined in Section
264 73-10-34.

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

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

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

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

271 (c) Notwithstanding the other provisions of this section, the board may issue a grant

272 under this section to a secondary water supplier to reimburse the secondary water supplier for
273 the costs incurred by the secondary water supplier that are associated with installing meters on
274 a secondary water system on or after March 3, 2021, but before May 4, 2022, except that the
275 grant issued under this Subsection (2)(c):

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

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

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

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

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

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

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

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

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

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

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

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

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

299 associated with the project:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324 (A) average lot size calculations;

325 (B) average irrigated acreage; and

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

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

328 (vi) an agreement to:

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

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

335 (vii) additional information the board considers helpful.

336 (5) (a) The division shall:

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

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

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

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

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

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

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

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

352 (b) require that the grant money be spent by December 31, 2026, and the project

353 completed under the terms of the grant.

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

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

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

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

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

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