

1 **WATER SUPPLY AND SURPLUS WATER AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kim F. Coleman**

5 Senate Sponsor: Ralph Okerlund

7 **LONG TITLE**

8 **General Description:**

9 This bill regulates municipalities that provide water to customers outside respective
10 political boundaries.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ describes the process by which a municipality may provide water to customers
15 outside the municipality's political boundary;
- 16 ▶ states that a municipality may not sell the municipality's waterworks, in whole or in
17 part, except as provided in statute;
- 18 ▶ creates reporting requirements; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **10-7-14**, Utah Code Annotated 1953

27 **10-8-14**, as last amended by Laws of Utah 2016, Chapter 419

28 **10-8-22**, Utah Code Annotated 1953

29 ENACTS:

30 73-5-16, Utah Code Annotated 1953

31

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

33 Section 1. Section **10-7-14** is amended to read:

34 **10-7-14. Rules and regulations for use of water.**

35 (1) As used in this section:

36 (a) "Designated water service area" means the area defined by a municipality in
37 accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

38 (b) "Retail customer" means an end user:

39 (i) who receives culinary water directly from a municipality's waterworks system; and

40 (ii) whom the municipality described in Subsection (1)(b)(i) bills for water service.

41 (c) (i) "Waterworks system" means municipally owned collection, treatment, storage,
42 and distribution facilities for culinary or irrigation water, including any pipe, hydrant, or
43 appurtenance to a pipe or hydrant.

44 (ii) "Waterworks system" does not include a water right or a source of supply such as a
45 well, spring, stream, or share in a mutual irrigation company.

46 (2) [~~Every city and town~~] A municipality may enact ordinances, rules and regulations
47 for the management and conduct of the waterworks system owned or controlled by it.

48 (3) A municipality that provides water to a retail customer outside of the municipality's
49 boundary shall:

50 (a) create and maintain a map showing:

51 (i) the municipality's designated water service area; and

52 (ii) each area outside the municipality's designated water service area where a retail
53 customer receives water service from the municipality;

54 (b) transmit a copy of the map described in Subsection (3)(a) to the state engineer;

55 (c) if the municipality has more than 500 retail customers, post the map described in
56 Subsection (3)(a) on the municipality's website;

57 (d) define, by ordinance, the area included in the municipality's designated water

58 service area;

59 (e) adopt, by ordinance, any municipality rule or regulation applicable to the
60 municipality's designated water service area or to a retail customer located outside of the
61 municipality's designated water service area; and

62 (f) adopt, by ordinance, reasonable water rates for retail customers in the municipality's
63 designated water service area, in accordance with Section [10-8-22](#).

64 (4) Within the municipality's designated water service area, a municipality shall:

65 (a) provide service to all retail customers in a manner consistent with principles of
66 equal protection; and

67 (b) apply restrictions on water use to all retail customers in times of anticipated or
68 actual water shortages in a manner consistent with principles of equal protection.

69 (5) Nothing in this section:

70 (a) prohibits a municipality from enacting a service restriction or other restriction:

71 (i) affecting:

72 (A) a localized area; or

73 (B) the municipality's entire designated water service area; and

74 (ii) (A) based on an operational or maintenance need;

75 (B) based on an emergency situation; or

76 (C) to address a health, safety, or general welfare need;

77 (b) expands or diminishes the ability of a municipality to enter into a contract to supply
78 water outside of the municipality's designated water service area; or

79 (c) alters the authorities or definitions described in Title 19, Chapter 4, Safe Drinking
80 Water Act.

81 (6) A municipality may not sell or convey an interest, in part or in whole, of the
82 municipality's waterworks system, except to a public entity as defined in Section [73-1-4](#).

83 Section 2. Section **10-8-14** is amended to read:

84 **10-8-14. Utility and telecommunications services -- Service beyond municipal**
85 **limits -- Retainage -- Notice of service and agreement.**

86 (1) As used in this section, "public telecommunications service facilities" means the
87 same as that term is defined in Section [10-18-102](#).

88 (2) A municipality may:

89 (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment
90 systems, gas works, electric light works, telecommunications lines, cable television lines,
91 public transportation systems, or public telecommunications service facilities;

92 (b) authorize the construction, maintenance and operation of the works or systems
93 listed in Subsection (2)(a) by others;

94 (c) purchase or lease the works or systems listed in Subsection (2)(a) from any person
95 or corporation; and

96 (d) sell and deliver the surplus product or service capacity of any works or system
97 listed in Subsection (2)(a), not required by the municipality or the municipality's inhabitants, to
98 others beyond the limits of the municipality, except the sale and delivery of:

99 (i) retail electricity beyond the municipal boundary is governed by Subsections (3)
100 through (8); ~~and~~

101 (ii) cable television services or public telecommunications services is governed by
102 Subsection (12)~~[-]; and~~

103 (iii) water is governed by Sections [10-7-14](#) and [10-8-22](#).

104 (3) If any payment on a contract with a private person, firm, or corporation to construct
105 waterworks, sewer collection, sewer treatment systems, gas works, electric works,
106 telecommunications lines, cable television lines, public transportation systems, or public
107 telecommunications service facilities is retained or withheld, it shall be retained or withheld
108 and released as provided in Section [13-8-5](#).

109 (4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell
110 or deliver the electricity produced or distributed by ~~[its]~~ the municipality's electric works
111 constructed, maintained, or operated in accordance with Subsection (2) to a retail customer
112 located beyond ~~[its]~~ the municipality's municipal boundary.

113 (b) A municipality that provides retail electric service to a customer beyond ~~[its]~~ the

114 municipality's municipal boundary on or before June 15, 2013, may continue to serve that
115 customer if:

116 (i) on or before December 15, 2013, the municipality provides the electrical
117 corporation, as defined in Section 54-2-1, that is obligated by [~~its~~] the municipality's certificate
118 of public convenience and necessity to serve the customer with an accurate and complete
119 verified written notice described in Subsection (4)(c) that identifies each customer served by
120 the municipality beyond [~~its~~] the municipality's municipal boundary;

121 (ii) no later than June 15, 2014, the municipality enters into a written filing agreement
122 for the provision of electric service with the electrical corporation; and

123 (iii) the Public Service Commission approves the written filing agreement in
124 accordance with Section 54-4-40.

125 (c) The municipality shall include in the written notice required in Subsection (4)(b)(i)
126 for each customer:

127 (i) the customer's meter number;

128 (ii) the location of the customer's meter by street address, global positioning system
129 coordinates, metes and bounds description, or other similar method of meter location;

130 (iii) the customer's class of service; and

131 (iv) a representation that the customer was receiving service from the municipality on
132 or before June 15, 2013.

133 (5) The written filing agreement entered into in accordance with Subsection (4)(b)(ii)
134 shall require the following:

135 (a) The municipality shall provide electric service to a customer identified in
136 accordance with Subsection (4)(b)(i) unless the municipality and the electrical corporation
137 subsequently agree in writing that the electrical corporation will provide electric service to the
138 customer.

139 (b) If a customer who is located outside the municipal boundary and who is not
140 identified in accordance with Subsection (4)(b)(i) requests service from the municipality after
141 June 15, 2013, the municipality may not provide that customer electric service unless the

142 municipality submits a request to and enters into a written agreement with the electric
143 corporation in accordance with Subsection (6).

144 (6) (a) A municipality may submit to the electrical corporation a request to provide
145 electric service to an electric customer described in Subsection (5)(b).

146 (b) If a municipality submits a request, the electrical corporation shall respond to the
147 request within 60 days.

148 (c) If the electrical corporation agrees to allow the municipality to provide electric
149 service to the customer:

150 (i) the electrical corporation and the municipality shall enter into a written agreement;

151 (ii) the municipality shall agree in the written agreement to subsequently transfer
152 service to the customer described in Subsection (5)(b) if the electrical corporation notifies, in
153 writing, the municipality that the electrical corporation has installed a facility capable of
154 providing electric service to the customer; and

155 (iii) the municipality may provide the service if:

156 (A) except as provided in Subsection (6)(c)(iii)(B), the Public Service Commission
157 approves the agreement in accordance with Section 54-4-40; or

158 (B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7),
159 the governing board of the electrical cooperative approves the agreement.

160 (d) The municipality or the electrical corporation may terminate the agreement for the
161 provision of electric service if the Public Service Commission imposes a condition authorized
162 in Section 54-4-40 that is a material change to the agreement.

163 (7) If the municipality and electrical corporation make a transfer described in
164 Subsection (6)(c)(ii):

165 (a) (i) the municipality shall transfer the electric service customer to the electrical
166 corporation; and

167 (ii) the electrical corporation shall provide electric service to the customer; and

168 (b) the municipality shall transfer a facility in accordance with and for the value as
169 provided in Section 10-2-421.

170 (8) (a) In accordance with Subsection (8)(b), the municipality shall establish a
171 reasonable mechanism for resolving potential future complaints by an electric customer located
172 outside [its] the municipality's municipal boundary.

173 (b) The mechanism shall require:

174 (i) that the rates and conditions of service for a customer outside the municipality's
175 boundary are at least as favorable as the rates and conditions of service for a similarly situated
176 customer within the municipality's boundary; and

177 (ii) if the municipality provides a general rebate, refund, or other payment to a
178 customer located within the municipality's boundary, that the municipality also provide the
179 same general rebate, refund, or other payment to a similarly situated customer located outside
180 the municipality's boundary.

181 (9) The municipality is relieved of any obligation to transfer a customer described in
182 Subsection (5)(b) or facility used to serve the customer in accordance with Subsection (6)(c)(ii)
183 if the municipality annexes the property on which the customer is being served.

184 (10) (a) A municipality may provide electric service outside of [its] the municipality's
185 municipal boundary to a facility that is solely owned and operated by the municipality for
186 municipal service.

187 (b) A municipality's provision of electric service to a facility that is solely owned and
188 operated by the municipality does not expand the municipality's electric service area.

189 (11) Nothing in this section expands or diminishes the ability of a municipality to enter
190 into a wholesale electrical sales contract with another municipality that serves electric
191 customers to sell and deliver wholesale electricity to the other municipality.

192 (12) A municipality's actions under this section related to works or systems involving
193 public telecommunications services or cable television services are subject to the requirements
194 of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

195 Section 3. Section **10-8-22** is amended to read:

196 **10-8-22. Water rates.**

197 (1) As used in this section:

198 (a) "Designated water service area" means the area defined by a municipality in
199 accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

200 (b) "Large municipal drinking water system" means a municipally owned and operated
201 drinking water system serving a population of 10,000 or more.

202 (c) "Retail customer" means an end user:

203 (i) who receives culinary water directly from a municipality's waterworks system; and

204 (ii) whom the municipality described in Subsection (1)(c)(i) bills for water service.

205 (2) [~~They may~~] A municipality shall fix the rates to be paid for the use of water
206 furnished by the [city] municipality.

207 (3) The setting of municipal water rates is a legislative act.

208 (4) Within the municipality's designated water service area, a municipality shall:

209 (a) establish, by ordinance, reasonable rates for the services provided to the
210 municipality's retail customers;

211 (b) use the same method of providing notice to all retail customers of proposed rate
212 changes; and

213 (c) allow all retail customers the same opportunity to appear and participate in a public
214 meeting addressing water rates.

215 (5) (a) A municipality may establish different rates for different classifications of retail
216 customers within the municipality's designated water service area, if the rates and
217 classifications have a reasonable basis.

218 (b) A reasonable basis for charging different rates for different classifications may
219 include, among other things, a situation in which:

220 (i) there is a difference in the cost of providing service to a particular classification;

221 (ii) one classification bears more risk in relation to a system operation or obligation;

222 (iii) retail customers in one classification invested or contributed to acquire a water
223 source or supply or build or maintain a system differently than retail customers in another
224 classification;

225 (iv) the needs or conditions of one classification;

226 (A) are distinguishable from the needs or conditions of another classification; and

227 (B) based on economic, public policy, or other identifiable elements, support a
228 different rate; or

229 (v) there is a differential between the classifications based on a cost of service standard
230 or a generally accepted rate setting method, including a standard or method the American
231 Water Works Association establishes.

232 (c) An adjustment based solely on the fact that a particular classification of retail
233 customers is located either inside or outside of the municipality's corporate boundary is not a
234 reasonable basis.

235 (6) (a) If more than 10% of the retail customers within a large municipal drinking water
236 system's designated water service area are located outside of the municipality's corporate
237 boundary, the municipality shall:

238 (i) post on the municipality's website the rates assessed to retail customers within the
239 designated water service area; and

240 (ii) establish an advisory board to make recommendations to the municipal legislative
241 body regarding water rates, capital projects, and other water service standards.

242 (b) In establishing an advisory board described in Subsection (6)(a)(ii), a municipality
243 shall:

244 (i) if more than 10% but no more than 30% of the municipality's retail customers
245 receive service outside the municipality's municipal boundary, ensure that at least 20% of the
246 advisory board's members represent the municipality's retail customers receiving service
247 outside the municipality's municipal boundary;

248 (ii) if more than 30% of the municipality's retail customers receive service outside of
249 the municipality's municipal boundary, ensure that at least 40% of the advisory board's
250 members represent the municipality's retail customers receiving service outside of the
251 municipality's municipal boundary; and

252 (iii) in appointing board members who represent retail customers receiving service
253 outside of the municipality's municipal boundary, as required in Subsections (6)(b)(i) and (ii),

254 solicit recommendations from each municipality and county outside of the municipality's
255 municipal boundary whose residents are retail customers within the municipality's designated
256 water service area.

257 (7) A municipality that supplies water outside of the municipality's designated water
258 service area shall supply the water only by contract and shall include in the contract the terms
259 and conditions under which the contract can be terminated.

260 (8) A municipality shall:

261 (a) notify the director of the Division of Drinking Water of a contract the municipality
262 enters into with a person outside of the municipality's designated water service area, including
263 the name and contact information of the person named in each contract; and

264 (b) each year, provide any supplementing or new information regarding a contract
265 described in Subsection (8)(a), including whether there is no new information to provide at that
266 time.

267 Section 4. Section **73-5-16** is enacted to read:

268 **73-5-16. State engineer to publish maps.**

269 The state engineer shall publish conspicuously on the state engineer's website a map a
270 municipality submits in accordance with Subsection [10-7-14\(3\)\(a\)](#).

271 Section 5. **Delayed effective date.**

272 This bill takes effect on January 1, 2021, if the amendment to the Utah Constitution
273 proposed by H.J.R. 1, Proposal to Amend Utah Constitution - Municipal Water Resources,
274 2019 General Session, passes the Legislature and is approved by a majority of those voting on
275 it at the next regular general election.