

SECONDARY WATER METERING REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses secondary water metering.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies penalty provisions;
- ▶ provides for an alternative metering requirement under certain conditions;
- ▶ allows the issuing of grants for projects other than metering under certain conditions; 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 2022, Chapter 61

73-10-34.5, as enacted by Laws of Utah 2022, Chapter 61

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



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

29 **73-10-34. Secondary water metering -- Loans and grants.**

30 (1) As used in this section:

31 (a) "Agriculture use" means water used on land assessed under Title 59, Chapter 2, Part
32 5, Farmland Assessment Act.

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

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

36 ~~(b)~~ (c) "Full metering" means that use of secondary water is accurately metered by a
37 meter that is installed and maintained on every secondary water connection of a secondary
38 water supplier.

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

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

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

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

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

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

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

52 ~~(f)~~ (h) "Secondary water" means water that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 pressurized water.

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

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

95 (B) how long it would take the secondary water supplier to complete full metering,
96 including an anticipated beginning date and completion date, except a secondary water supplier
97 shall achieve full metering by no later than January 1, 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) Nothing in this section affects a water right holder's obligation to measure and
147 report water usage as described in Sections 73-5-4 and 73-5-8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 (ii) certified mail.

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

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

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

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

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

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

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

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

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

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

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

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

212 (a) the owner or operator of the secondary water supplier seeks an exemption under
213 this Subsection (9) by establishing with the Division of Water Resources that the cost of

214 purchasing, installing, and upgrading systems to accept meters exceeds 25% of the total
215 operating budget of the owner or operator of the secondary water supplier;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

254 or

255 (iii) the system has:

256 (A) 1,000 or fewer users; and

257 (B) a mix of pressurized lines and open ditches.

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

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

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

265 **73-10-34.5. Grant money for existing secondary water metering to facilitate full**
 266 **metering -- Other grants.**

267 (1) As used in this section:

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

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

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

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

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

275 (f) "Secondary water connection" means the same as that term is defined in Section

276 73-10-34.

277 (g) "Secondary water supplier" means the same as that term is defined in Section

278 73-10-34.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 307 (B) for calendar year 2023, 70% of the costs of a project;
- 308 (C) for calendar year 2024, 65% of the costs of a project;
- 309 (D) for calendar year 2025, 60% of the costs of a project; and
- 310 (E) for calendar year 2026, 50% of the costs of a project.

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

- 314 (A) for calendar year 2027, 40% of the costs of a project;
- 315 (B) for calendar year 2028, 30% of the costs of a project;
- 316 (C) for calendar year 2029, 20% of the costs of a project; and
- 317 (D) for calendar year 2030, 10% of the costs of a project.

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

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

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

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

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

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

- 333 (i) a detailed project cost estimate including meter costs and installation costs;
- 334 (ii) a total number of pressurized secondary water connections in the applicable
335 secondary water supplier's system;
- 336 (iii) the number of meters to be installed under the grant;
- 337 (iv) a detailed estimated secondary water use reduction including:

- 338 (A) average lot size calculations;
- 339 (B) average irrigated acreage; and
- 340 (C) estimated water applied before the project versus after completion of the project;
- 341 (v) the timeline for purchase and installation of meters under the project;
- 342 (vi) an agreement to:
 - 343 (A) provide an educational component for end users as determined by the division by
 - 344 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 - 345 either on a monthly statement or by a customer specific Internet portal that provides
 - 346 information on the customer's usage more frequently than monthly; or
 - 347 (B) bill according to usage using a tiered conservation rate and provide an educational
 - 348 component described in Subsection (4)(b)(vi)(A); and
 - 349 (vii) additional information the board considers helpful.
- 350 (5) (a) The division shall:
 - 351 (i) review and prioritize an application submitted under Subsection (4); and
 - 352 (ii) recommend to the board which applicants should be awarded a grant under this
 - 353 section.
 - 354 (b) In prioritizing applications under this Subsection (5), the division shall rank the
 - 355 applicants on the basis of the following weighted factors:
 - 356 (i) 60% weight based on the ratio of estimated water use reduction divided by total
 - 357 state investment;
 - 358 (ii) 20% weight based on an applicant facing current or potential water shortages when
 - 359 installation of meters and subsequent water use reductions will result in delaying or eliminating
 - 360 the need for new water development; and
 - 361 (iii) 20% weight based on a project's accelerated construction schedule, prompt start,
 - 362 and prompt finish.
 - 363 (6) As a condition of receiving a grant under this section, the recipient shall enter into
 - 364 an agreement with the board to use the grant money. The agreement shall:
 - 365 (a) be executed by no later than December 31, 2024; and
 - 366 (b) require that the grant money be spent by December 31, 2026, and the project
 - 367 completed under the terms of the grant.
 - 368 (7) Notwithstanding the other provisions of this section, the board may issue a grant to

369 a secondary water supplier:

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

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

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

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

374 (8) Notwithstanding the other provisions of this section, the board may issue a grant to

375 or convert a grant previously issued to a secondary water supplier described in Subsection

376 73-10-34(13)(a)(iii) from money appropriated under this section to fund a project that is an

377 alternative to metering, such as lining ditches or improving head gates, if the secondary water

378 supplier establishes to the satisfaction of the board that the alternative project will conserve

379 more water than is expected to be conserved through metering.

380 [~~8~~] (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

381 Act, and consistent with this section, the board may make rules establishing the procedure for

382 applying for a grant under this section.