

1 **WATER RELATED LIABILITY AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Carl R. Albrecht**

5 Senate Sponsor: Derrin R. Owens

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions concerning liability related to water facilities, streams, or
10 rivers and related trails.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ makes conforming amendments addressing governmental immunity;
- 14 ▶ clarifies language related to operators of a water facility;
- 15 ▶ addresses liability of an owner or operator of a water facility, stream, or river along
16 certain trails;
- 17 ▶ codifies standard of care;
- 18 ▶ addresses liability of an owner or operator of a water facility;
- 19 ▶ addresses interference related to a water facility; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63G-7-201**, as last amended by Laws of Utah 2021, Chapter 352

28 **73-1-8**, as last amended by Laws of Utah 2007, Chapter 357

29 **73-1-14**, as last amended by Laws of Utah 2022, Chapter 310

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

Section 1. Section **63G-7-201** is amended to read:

63G-7-201. Immunity of governmental entities and employees from suit.

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section **63G-7-301**, a governmental entity, its officers, and its employees are immune from suit:

(a) as provided in Section **78B-4-517**; and

(b) for any injury or damage resulting from the implementation of or the failure to implement measures to:

(i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(ii) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

(iii) respond to a national, state, or local emergency, a public health emergency as defined in Section **26-23b-102**, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

(A) an emergency shelter;

(B) housing;

(C) a staging place; or

(D) a medical facility; and

(iv) adopt methods or measures, in accordance with Section **26-1-30**, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

58 (3) A governmental entity, its officers, and its employees are immune from suit, and
59 immunity is not waived, for any injury if the injury arises out of or in connection with, or
60 results from:

61 (a) a latent dangerous or latent defective condition of:

62 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or
63 viaduct; or

64 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

65 (b) a latent dangerous or latent defective condition of any public building, structure,
66 dam, reservoir, or other public improvement.

67 (4) A governmental entity, its officers, and its employees are immune from suit, and
68 immunity is not waived, for any injury proximately caused by a negligent act or omission of an
69 employee committed within the scope of employment, if the injury arises out of or in
70 connection with, or results from:

71 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
72 function, whether or not the discretion is abused;

73 (b) except as provided in Subsections [63G-7-301\(2\)\(j\)](#), (3), and (4), assault, battery,
74 false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process,
75 libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation
76 of civil rights;

77 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,
78 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
79 authorization;

80 (d) a failure to make an inspection or making an inadequate or negligent inspection;

81 (e) the institution or prosecution of any judicial or administrative proceeding, even if
82 malicious or without probable cause;

83 (f) a misrepresentation by an employee whether or not the misrepresentation is
84 negligent or intentional;

85 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

- 86 (h) the collection or assessment of taxes;
- 87 (i) an activity of the Utah National Guard;
- 88 (j) the incarceration of a person in a state prison, county or city jail, or other place of
89 legal confinement;
- 90 (k) a natural condition on publicly owned or controlled land;
- 91 (l) a condition existing in connection with an abandoned mine or mining operation;
- 92 (m) an activity authorized by the School and Institutional Trust Lands Administration
93 or the Division of Forestry, Fire, and State Lands;
- 94 (n) the operation or existence of a [~~pedestrian or equestrian~~] trail that is along a [~~ditch,~~
95 ~~canal~~] water facility, as defined in Section 73-1-8, stream, or river, regardless of ownership or
96 operation of the [~~ditch, canal~~] water facility, stream, or river, if:
 - 97 (i) the trail is designated under a general plan adopted by a municipality under Section
98 10-9a-401 or by a county under Section 17-27a-401;
 - 99 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
100 use as evidenced by a written agreement between:
 - 101 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
102 is located; and
 - 103 (B) the municipality or county where the trail is located; and
 - 104 (iii) the written agreement:
 - 105 (A) contains a plan for operation and maintenance of the trail; and
 - 106 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
107 where the trail is located has, at a minimum, the same level of immunity from suit as the
108 governmental entity in connection with or resulting from the use of the trail;
 - 109 (o) research or implementation of cloud management or seeding for the clearing of fog;
 - 110 (p) the management of flood waters, earthquakes, or natural disasters;
 - 111 (q) the construction, repair, or operation of flood or storm systems;
 - 112 (r) the operation of an emergency vehicle, while being driven in accordance with the
113 requirements of Section 41-6a-212;

- 114 (s) the activity of:
- 115 (i) providing emergency medical assistance;
- 116 (ii) fighting fire;
- 117 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 118 (iv) an emergency evacuation;
- 119 (v) transporting or removing an injured person to a place where emergency medical
- 120 assistance can be rendered or where the person can be transported by a licensed ambulance
- 121 service; or
- 122 (vi) intervening during a dam emergency;
- 123 (t) the exercise or performance, or the failure to exercise or perform, any function
- 124 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 125 (u) an unauthorized access to government records, data, or electronic information
- 126 systems by any person or entity;
- 127 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
- 128 public or private road; or
- 129 (w) a communication between employees of one or more law enforcement agencies
- 130 related to the employment, disciplinary history, character, professional competence, or physical
- 131 or mental health of a peace officer, or a former, current, or prospective employee of a law
- 132 enforcement agency, including any communication made in accordance with Section
- 133 53-14-101.

134 Section 2. Section 73-1-8 is amended to read:

135 **73-1-8. Duties of owners or operators -- Bridges and trails -- Liability.**

136 (1) As used in this section:

137 (a) "Water facility" means a dam, pipeline, culvert, flume, conduit, ditch, head gate,

138 canal, reservoir, spring box, well, meter, weir, valve, casing, cap, or other facility used for the

139 diversion, transportation, distribution, measurement, collection, containment, or storage of

140 irrigation water.

141 (b) "Water facility" does not mean a facility used primarily as part of a:

142 (i) public water system as defined in Section 19-4-102; or

143 (ii) residential irrigation system.

144 ~~[(1)]~~ (2) ~~[The]~~ An owner or operator of ~~[any ditch, canal, flume or other watercourse]~~ a
145 water facility shall:

146 (a) maintain ~~[it]~~ the water facility to prevent waste of water ~~[or]~~, damage to ~~[the~~
147 ~~property of others]~~ property, or injury to others; and

148 (b) by bridge or otherwise, keep ~~[it]~~ the water facility in good repair where ~~[it]~~ the
149 water facility crosses ~~[any]~~ a public road or highway to prevent obstruction to travel or damage
150 or overflow on the public road or highway.

151 ~~[(2)]~~ (3) ~~[The provisions of Subsection (1)(b) do]~~ Subsection (2)(b) does not apply
152 where a governmental entity maintains or elects to maintain a bridge or other device to prevent
153 obstruction to travel or damage or overflow on the public road or highway.

154 ~~[(3)]~~ (4) ~~[An]~~ In addition to immunity if the conditions of Title 57, Chapter 14,
155 Limitations on Landowner Liability, are met, an owner or operator of a ~~[ditch, canal]~~ water
156 facility, stream, or river, is immune from suit if:

157 (a) the damage or personal injury arises out of, is in connection with, or results from
158 the use of a ~~[pedestrian or equestrian]~~ trail that is located along a ~~[ditch, canal]~~ water facility,
159 stream, or river, regardless of ownership or operation of the ~~[ditch, canal]~~ water facility,
160 stream, or river;

161 (b) the trail is designated under a general plan adopted by a municipality under Section
162 10-9a-401 or by a county under Section 17-27a-401;

163 (c) the trail right-of-way or the right-of-way where the trail is located is open to public
164 use as evidenced by a written agreement between the owner or operator of the trail
165 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
166 where the trail is located; and

167 (d) the written agreement:

168 (i) contains a plan for operation and maintenance of the trail; and

169 (ii) provides that an owner or operator of the trail right-of-way, or of the right-of-way

170 where the trail is located has, at minimum, the same level of immunity from suit as the
171 governmental entity in connection with or resulting from use of the trail.

172 (5) (a) The duty under Subsection (2) requires only reasonable and ordinary care and
173 may not be construed to impose strict liability or to otherwise increase the liability of the owner
174 or operator of a water facility.

175 (b) An owner or operator of a water facility is not liable for damage or injury caused
176 by:

177 (i) the diversion or discharge of water or another substance into the water facility by a
178 third party beyond the control of the owner or operator of the water facility, including control
179 exercised by the owner's or operator's employees or agents;

180 (ii) any other act or omission of a third party that is beyond the control of the owner or
181 operator of the water facility, including control exercised by the owner's or operator's
182 employees or agents; or

183 (iii) an act of God, including fire, earthquake, storm, flash floods, or similar natural
184 occurrences.

185 (6) This section may not be interpreted to impair a defense that an owner or operator of
186 a water facility may assert in a civil action.

187 Section 3. Section **73-1-14** is amended to read:

188 **73-1-14. Acts against water facilities or interfering with apportioning official --**
189 **Penalty and liability.**

190 (1) As used in this section:

191 (a) "Connection to a water facility" includes:

192 (i) to introduce water or another substance into or take water from a water facility
193 through a pipeline, flume, ditch, canal, trench, holding pond, or water collection structure;

194 (ii) to place or maintain a structure capable of introducing water or another substance
195 directly into or of taking water from a water facility from a pipeline, flume, ditch, canal, trench,
196 holding pond, or water collection structure; or

197 (iii) to cut into or breach a canal or ditch bank for the purpose of introducing water or

198 another substance into or of taking water from the canal or ditch.

199 (b) "Interfere," for purposes of a water facility, means damage to or modification of the
200 water facility that results in actual blockage or diversion of water, stormwater, wastewater, or
201 sewage.

202 (c) "Knowingly" means the same as that term is defined in Section 76-2-103.

203 (d) "Water facility" means a dam, pipeline, culvert, fire hydrant, flume, conduit, ditch,
204 head gate, canal, reservoir, storage tank, spring box, well, meter, weir, valve, casing, cap, or
205 other facility used for the diversion, transportation, distribution, measurement, collection,
206 containment, or storage of water, stormwater, wastewater, or sewage.

207 (2) Subject to Subsection (6), a person is guilty of a crime punishable under Section
208 73-2-27 if the person:

209 (a) knowingly makes a temporary or permanent connection to, or interferes with, a
210 water facility without:

211 (i) first obtaining the written consent of the owner or operator of the water facility; or

212 (ii) having other lawful authority; or

213 (b) without lawful authority, knowingly interferes with an individual authorized to
214 apportion water while in the discharge of the individual's duties.

215 (3) A person who commits an act defined as a crime under this section is also liable for
216 damages, other relief, and reasonable costs and attorney fees as provided in Section 73-2-28, in
217 a civil action brought by a person injured by that act.

218 (4) (a) A civil action under this section may be brought independent of a criminal
219 action.

220 (b) Proof of the elements of a civil action under this section need only be made by a
221 preponderance of the evidence.

222 (5) A person who complies with Title 54, Chapter 8a, Damage to Underground Utility
223 Facilities, Section 73-1-7, or Section 73-1-15.5 may not be held criminally or civilly liable for
224 actions allowed by those sections.

225 (6) (a) "Person" for purposes of this section does not include a government entity,

226 including a political subdivision of the state.

227 (b) This section may not be interpreted to limit or impair a claim otherwise provided by
228 law of a water facility owner or operator against a government entity.