

**EMERGENCY WATER SHORTAGES AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl R. Albrecht**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses emergency shortages of water declared by the governor.

**Highlighted Provisions:**

This bill:

- ▶ amends the powers of the Department of Agriculture and Food;
- ▶ addresses references to a revolving loan fund;
- ▶ addresses governmental immunity;
- ▶ enacts the Water Preferences During Emergencies chapter, including:
  - defining terms;
  - providing for scope of the chapter;
  - outlining the process for declaring a temporary water shortage emergency;
  - addressing water use preferences under a temporary water shortage emergency;
  - providing for compensation related to water use preferences;
  - creating a revolving loan fund; and
  - addressing rulemaking by the Department of Agriculture and Food;
- ▶ repeals existing statutes related to water preferences and a study; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **4-2-103**, as last amended by Laws of Utah 2022, Chapters 68, 79

32 **63A-3-205**, as last amended by Laws of Utah 2022, Chapters 100, 451

33 **63C-25-101**, as enacted by Laws of Utah 2022, Chapter 207 and last amended by  
34 Coordination Clause, Laws of Utah 2022, Chapter 207

35 **63G-7-302**, as last amended by Laws of Utah 2022, Chapter 388

36 ENACTS:

37 **73-3d-101**, Utah Code Annotated 1953

38 **73-3d-102**, Utah Code Annotated 1953

39 **73-3d-201**, Utah Code Annotated 1953

40 **73-3d-202**, Utah Code Annotated 1953

41 **73-3d-301**, Utah Code Annotated 1953

42 **73-3d-302**, Utah Code Annotated 1953

43 **73-3d-401**, Utah Code Annotated 1953

44 **73-3d-402**, Utah Code Annotated 1953

45 **73-3d-403**, Utah Code Annotated 1953

46 **73-3d-404**, Utah Code Annotated 1953

47 REPEALS:

48 **73-3-21.3**, as enacted by Laws of Utah 2022, Chapter 311

49 **73-3-21.5**, as enacted by Laws of Utah 2022, Chapter 311



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

52 Section 1. Section **4-2-103** is amended to read:

53 **4-2-103. Functions, powers, and duties of department -- Fees for services --**  
54 **Marketing orders -- Procedure -- Purchasing and auditing.**

55 (1) The department shall:

56 (a) inquire into and promote the interests and products of agriculture and allied  
57 industries;

58 (b) promote methods for increasing the production and facilitating the distribution of

59 the agricultural products of the state;

60 (c) (i) inquire into the cause of contagious, infectious, and communicable diseases  
61 among livestock and the means for their prevention and cure; and

62 (ii) initiate, implement, and administer plans and programs to prevent the spread of  
63 diseases among livestock;

64 (d) encourage experiments designed to determine the best means and methods for the  
65 control of diseases among domestic and wild animals;

66 (e) issue marketing orders for any designated agricultural product to:

67 (i) promote orderly market conditions for any product;

68 (ii) give the producer a fair return on the producer's investment at the marketplace; and

69 (iii) only promote and not restrict or restrain the marketing of Utah agricultural  
70 commodities;

71 (f) administer and enforce all laws assigned to the department by the Legislature;

72 (g) establish standards and grades for agricultural products and fix and collect  
73 reasonable fees for services performed by the department in conjunction with the grading of  
74 agricultural products;

75 (h) establish operational standards for any establishment that manufactures, processes,  
76 produces, distributes, stores, sells, or offers for sale any agricultural product;

77 (i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
78 rules necessary for the effective administration of the agricultural laws of the state;

79 (j) when necessary, make investigations, subpoena witnesses and records, conduct  
80 hearings, issue orders, and make recommendations concerning matters related to agriculture;

81 (k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any  
82 private or public place that may become infested or infected with harmful insects, plant  
83 diseases, noxious or poisonous weeds, or other agricultural pests;

84 (ii) establish and enforce quarantines;

85 (iii) issue and enforce orders and rules for the control and eradication of pests,  
86 wherever they may exist within the state; and

87 (iv) perform other duties relating to plants and plant products considered advisable and  
88 not contrary to law;

89 (l) inspect apiaries for diseases inimical to bees and beekeeping;

90 (m) take charge of any agricultural exhibit within the state, if considered necessary by  
91 the department, and award premiums at that exhibit;

92 (n) provide for the coordination of state conservation efforts, including by:

93 (i) assisting the Conservation Commission in the administration of Chapter 18,  
94 Conservation Commission Act;

95 (ii) implementing Chapter 46, Conservation Coordination Act, including entering into  
96 agreements with other state agencies; and

97 (iii) administering and disbursing money available to assist conservation districts in the  
98 state in the conservation of the state's soil and water resources;

99 (o) participate in the United States Department of Agriculture certified agricultural  
100 mediation program, in accordance with 7 U.S.C. Sec. 5101 and 7 C.F.R. Part 785;

101 (p) promote and support the multiple use of public lands;

102 (q) ensure that any training or certification required of a public official or public  
103 employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter  
104 22, State Training and Certification Requirements, if the training or certification is required:

105 (i) under this title;

106 (ii) by the department; or

107 (iii) by an entity within the department; [~~and~~]

108 (r) in accordance with Title 73, Chapter 3d, Part 4, Compensation:

109 (i) conduct mediation or arbitration; and

110 (ii) administer the Water Preference Compensation Fund; and

111 [~~(r)~~] (s) perform any additional functions, powers, and duties provided by law.

112 (2) The department, by following the procedures and requirements of Section  
113 [63J-1-504](#), may adopt a schedule of fees assessed for services provided by the department.

114 (3) (a) A marketing order issued under Subsection (1)(e) may not take effect until:

115 (i) the department gives notice of the proposed order to the producers and handlers of  
116 the affected product;

117 (ii) the commissioner conducts a hearing on the proposed order; and

118 (iii) at least 50% of the registered producers and handlers of the affected products vote  
119 in favor of the proposed order.

120 (b) (i) The department may establish boards of control to administer marketing orders

121 and the proceeds derived from any order.

122 (ii) A board of control shall:

123 (A) ensure that proceeds are placed in an account in the board of control's name in a  
124 depository institution; and

125 (B) ensure that the account is annually audited by an accountant approved by the  
126 commissioner.

127 (4) Money collected by grain grading, as provided by Subsection (1)(g), shall be  
128 deposited into the General Fund as dedicated credits for the grain grading program.

129 (5) In fulfilling the department's duties in this chapter, the department may:

130 (a) purchase, as authorized or required by law, services that the department is  
131 responsible to provide for legally eligible persons;

132 (b) take necessary steps, including legal action, to recover money or the monetary value  
133 of services provided to a recipient who is not eligible;

134 (c) examine and audit the expenditures of any public funds provided to a local  
135 authority, agency, or organization that contracts with or receives funds from those authorities or  
136 agencies;

137 (d) accept and administer grants from the federal government and from other sources,  
138 public or private; and

139 (e) fund grants using money appropriated by the Legislature or money received from  
140 any other source.

141 Section 2. Section **63A-3-205** is amended to read:

142 **63A-3-205. Revolving loan funds -- Standards and procedures.**

143 (1) As used in this section, "revolving loan fund" means:

144 (a) the Water Resources Conservation and Development Fund, created in Section  
145 [73-10-24](#);

146 (b) the Water Resources Construction Fund, created in Section [73-10-8](#);

147 (c) the Water Resources Cities Water Loan Fund, created in Section [73-10-22](#);

148 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean  
149 Fuels and Emission Reduction Technology Program Act;

150 (e) the Water Development Security Fund and its subaccounts, created in Section  
151 [73-10c-5](#);

- 152 (f) the Agriculture Resource Development Fund, created in Section 4-18-106;
- 153 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-105;
- 154 (h) the Permanent Community Impact Fund, created in Section 35A-8-303;
- 155 (i) the Petroleum Storage Tank Fund, created in Section 19-6-409;
- 156 (j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;
- 157 (k) the Navajo Revitalization Fund, created in Section 35A-8-1704; [~~and~~]
- 158 (l) the Energy Efficiency Fund, created in Section 11-45-201[:]; and
- 159 (m) the Water Preference Compensation Fund created in Section 73-3d-401.

160 (2) The division shall for each revolving loan fund make rules establishing standards  
 161 and procedures governing:

- 162 (a) payment schedules and due dates;
- 163 (b) interest rate effective dates;
- 164 (c) loan documentation requirements; and
- 165 (d) interest rate calculation requirements.

166 Section 3. Section 63C-25-101 is amended to read:

167 **63C-25-101. Definitions.**

168 As used in this chapter:

- 169 (1) "Authority" means the same as that term is defined in Section 63B-1-303.
- 170 (2) "Bond" means the same as that term is defined in Section 63B-1-101.
- 171 (3) "Bonding political subdivision" means:
  - 172 (a) the Utah Inland Port Authority, created in Section 11-58-201;
  - 173 (b) the Military Installation Development Authority, created in Section 63H-1-201;
  - 174 (c) the Point of the Mountain State Land Authority, created in Section 11-59-201; or
  - 175 (d) the Utah Lake Authority, created in Section 11-65-201.
- 176 (4) "Commission" means the State Finance Review Commission created in Section  
 177 63C-25-201.
- 178 (5) "Concessionaire" means a person who:
  - 179 (a) operates, finances, maintains, or constructs a government facility under a contract  
 180 with a bonding political subdivision; and
  - 181 (b) is not a bonding political subdivision.
- 182 (6) "Creating entity" means the same as that term is defined in Section 17D-4-102.

- 183 (7) "Government facility" means infrastructure, improvements, or a building that:  
184 (a) costs more than \$5,000,000 to construct; and  
185 (b) has a useful life greater than five years.
- 186 (8) "Large public transit district" means the same as that term is defined in Section  
187 [17B-2a-802](#).
- 188 (9) "Loan entity" means the board, person, unit, or agency with legal responsibility for  
189 making a loan from a revolving loan fund.
- 190 (10) "Obligation" means the same as that term is defined in Section [63B-1-303](#).
- 191 (11) "Parameters resolution" means a resolution of a bonding political subdivision, or  
192 public infrastructure district created by a bonding political subdivision, that sets forth for  
193 proposed bonds:
- 194 (a) the maximum:  
195 (i) amount of bonds;  
196 (ii) term; and  
197 (iii) interest rate; and  
198 (b) the expected security for the bonds.
- 199 (12) "Public infrastructure district" means a public infrastructure district created under  
200 Title 17D, Chapter 4, Public Infrastructure District Act.
- 201 (13) "Public-private partnership" means a contract:  
202 (a) between a bonding political subdivision and a concessionaire for the operation,  
203 finance, maintenance, or construction of a government facility;  
204 (b) that authorizes the concessionaire to operate the government facility for a term of  
205 five years or longer, including any extension of the contract; and  
206 (c) in which all or some of the annual source of payment to the concessionaire comes  
207 from state funds provided to the bonding political subdivision.
- 208 (14) "Revolving loan fund" means:  
209 (a) the Water Resources Conservation and Development Fund, created in Section  
210 [73-10-24](#);  
211 (b) the Water Resources Construction Fund, created in Section [73-10-8](#);  
212 (c) the Water Resources Cities Water Loan Fund, created in Section [73-10-22](#);  
213 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean

214 Fuels and ~~[Vehicle]~~ Emission Reduction Technology Program Act;

215 (e) the Water Development Security Fund and its subaccounts, created in Section

216 73-10c-5;

217 (f) the Agriculture Resource Development Fund, created in Section 4-18-106;

218 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-105;

219 (h) the Permanent Community Impact Fund, created in Section 35A-8-303;

220 (i) the Petroleum Storage Tank Fund, created in Section 19-6-409;

221 (j) the School Building Revolving Account, created in Section 53F-9-206;

222 (k) the State Infrastructure Bank Fund, created in Section 72-2-202;

223 (l) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

224 (m) the Navajo Revitalization Fund, created in Section 35A-8-1704;

225 (n) the Energy Efficiency Fund, created in Section 11-45-201;

226 (o) the Brownfields Fund, created in Section 19-8-120;

227 (p) the Water Preference Compensation Fund created in Section 73-3d-401;

228 ~~[(p)]~~ (q) the following enterprise revolving loan funds created in Section 63A-3-402:

229 (i) the inland port infrastructure revolving loan fund;

230 (ii) the point of the mountain infrastructure revolving loan fund; or

231 (iii) the military development infrastructure revolving loan fund; and

232 ~~[(q)]~~ (r) any other revolving loan fund created in statute where the borrower from the  
233 revolving loan fund is a public non-profit entity or political subdivision, including a fund listed  
234 in Section 63A-3-205, from which a loan entity is authorized to make a loan.

235 (15) (a) "State funds" means an appropriation by the Legislature identified as coming  
236 from the General Fund or Education Fund.

237 (b) "State funds" does not include:

238 (i) a revolving loan fund; or

239 (ii) revenues received by a bonding political subdivision from:

240 (A) a tax levied by the bonding political subdivision;

241 (B) a fee assessed by the bonding political subdivision; or

242 (C) operation of the bonding political subdivision's government facility.

243 Section 4. Section **63G-7-302** is amended to read:

244 **63G-7-302. Assessment of compensation and damages in an action for taking or**



245 **damaging private property.**

246 (1) ~~[In any]~~ Except as provided in Subsection (2), in an action brought under ~~[the~~  
 247 ~~authority of]~~ Utah Constitution, Article I, Section 22, ~~[of the Utah Constitution]~~ for the  
 248 recovery of compensation from the governmental entity when the governmental entity has  
 249 taken or damaged private property for public uses without just compensation, compensation  
 250 and damages shall be assessed according to ~~[the requirements of]~~ Title 78B, Chapter 6, Part 5,  
 251 Eminent Domain.

252 (2) In an action brought under Utah Constitution, Article I, Section 22, for the recovery  
 253 of compensation for the interruption of water use in the case of a temporary water shortage  
 254 emergency that results in the taking or damage of property for public uses without just  
 255 compensation, compensation and damages shall be assessed in accordance with Title 73,  
 256 Chapter 3d, Water Preferences During Emergencies.

257 Section 5. Section **73-3d-101** is enacted to read:

258 **CHAPTER 3d. WATER PREFERENCES DURING EMERGENCIES**

259 **Part 1. General Provisions**

260 **73-3d-101. Definitions.**

261 As used in this chapter:

262 (1) "Electric utility" means:

263 (a) a municipal electric utility, as defined in Section [10-19-102](#);

264 (b) an electric interlocal entity, as defined in Section [11-13-103](#);

265 (c) an energy services interlocal entity, as defined in Section [11-13-103](#);

266 (d) a project entity, as defined in Section [11-13-103](#);

267 (e) an electric improvement district, as defined in Section [17B-2a-406](#); or

268 (f) an electrical corporation, as defined in Section [54-2-1](#).

269 (2) "Military facility" means an installation, base, air field, camp, post, station, yard,  
 270 center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United  
 271 States Department of Defense or the National Guard.

272 (3) "Person entitled to make a request" means:

273 (a) the holder of an approved but unperfected application to appropriate water;

274 (b) the record owner of a perfected water right; or

275 (c) a person who provides water using an approved but unperfected application or a

276 perfected water right with the written authorization of a person described in Subsection (3)(a)  
277 or (b).

278 (4) "Temporary water shortage emergency" means an interruption of water delivery for  
279 which the governor may declare an emergency in accordance with Section [73-3d-201](#).

280 Section 6. Section **73-3d-102** is enacted to read:

281 **73-3d-102. Scope of chapter.**

282 (1) (a) The powers vested in the governor under this chapter are in addition to, and not  
283 in lieu of, any other emergency powers otherwise statutorily vested in the governor, including  
284 the power of the governor to authorize the use of water sources as necessary for fire  
285 suppression under Subsection [53-2a-204](#)(1)(o).

286 (b) An executive order of the governor declaring a temporary water shortage  
287 emergency under this chapter is not a declaration of a state of emergency under Section  
288 [53-2a-206](#) and is not subject to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery  
289 Act. To exercise an authority granted under Title 53, Chapter 2a, Part 2, Disaster Response and  
290 Recovery Act, related to a declaration of a state of emergency, the governor shall issue an  
291 executive order that is separate from an executive order declaring a temporary water shortage  
292 emergency.

293 (2) Nothing in this chapter modifies:

294 (a) the statutory duties of the state engineer under this title; or

295 (b) except as specifically provided in an executive order declaring a temporary water  
296 shortage emergency, Subsection [73-3-1](#)(5)(a) or Section [73-3-21.1](#).

297 Section 7. Section **73-3d-201** is enacted to read:

298 **Part 2. Declaration of Temporary Water Shortage Emergency**

299 **73-3d-201. Declaration of a temporary water shortage emergency by the**

300 **governor.**

301 (1) (a) Subject to the requirements of this section, the governor may declare a  
302 temporary water shortage emergency by issuing an executive order if, on the governor's own  
303 initiative or at the request of a person entitled to make a request, the governor determines that  
304 an existing or imminent short-term interruption of water delivery in this state caused by  
305 manmade or natural causes other than drought:

306 (i) threatens:

- 307 (A) the availability or quality of an essential water supply or water supply  
308 infrastructure; or
- 309 (B) the operation of the economy; and  
310 (ii) because of the threats described in Subsection (1)(a)(i), jeopardizes the peace,  
311 health, safety, or welfare of the people of this state.
- 312 (b) The governor may only issue the executive order declaring a temporary water  
313 shortage emergency described in Subsection (1)(a):
- 314 (i) with the advice and recommendation of the state engineer; and  
315 (ii) in consultation with the emergency management administration committee created  
316 by Section 53-2a-105.
- 317 (c) An executive order issued under this Subsection (1) shall state with specificity:
- 318 (i) the nature of the interruption of water supply;  
319 (ii) subject to Subsection (2), the time period for which the temporary water shortage  
320 emergency is declared;
- 321 (iii) a description of the geographic area that is subject to the executive order;  
322 (iv) a list of the specific persons entitled to make a request who may exercise the  
323 preferential use of water under Section 73-3d-301 during the effective period of the temporary  
324 water shortage emergency; and
- 325 (v) the purposes outlined in Subsection 73-3d-301(1) for which a person who is  
326 described in Subsection (1)(c)(iv) may take the water subject to Section 73-3d-301.
- 327 (d) Before providing a recommendation to the governor under Subsection (1)(b)(i), the  
328 state engineer shall require a person entitled to make a request who is described in Subsection  
329 (1)(c)(iv) to provide a written statement describing how the person entitled to make a request  
330 has exhausted other reasonable means to acquire water.
- 331 (e) A person entitled to make a request who is described in Subsection (1)(c)(iv) may  
332 take water preferentially during a temporary water shortage emergency only for a purpose  
333 authorized by the executive order.
- 334 (f) (i) Within seven calendar days of the day on which the governor issues an executive  
335 order declaring a temporary water shortage emergency, the Legislative Management  
336 Committee shall:
- 337 (A) review the executive order; and

338 (B) advise the governor on the declaration of a temporary water shortage emergency.

339 (ii) The failure of the Legislative Management Committee to meet as required by  
340 Subsection (1)(f)(i) does not affect the validity of the executive order declaring a temporary  
341 water shortage emergency.

342 (2) (a) The governor shall state in an executive order declaring a temporary water  
343 shortage emergency the time period for which the temporary water shortage emergency is  
344 declared, except that the governor may not declare a temporary water shortage emergency for  
345 longer than six months from the date the executive order is issued.

346 (b) The governor may terminate an executive order declaring a temporary water  
347 shortage emergency before the expiration of the time period stated in the executive order.

348 (c) The Legislature may extend the time period of an executive order declaring a  
349 temporary water shortage emergency by joint resolution, except that the Legislature may not  
350 extend a temporary water shortage emergency for longer than one year from the day on which  
351 the executive order declaring a temporary water shortage emergency is issued.

352 Section 8. Section **73-3d-202** is enacted to read:

353 **73-3d-202. Existing agencies to be used in implementation.**

354 The governor shall use, to the extent practicable, existing state boards, commissions, or  
355 agencies, or officers or employees for the purpose of carrying out this chapter.

356 Section 9. Section **73-3d-301** is enacted to read:

357 **Part 3. Preferences Under a Temporary Water Shortage Emergency**

358 **73-3d-301. Preferences between persons using water.**

359 (1) Notwithstanding Section [73-3-21.1](#), if the governor issues an executive order  
360 declaring a temporary water shortage emergency under this chapter:

361 (a) use of water is preferred over other water use during the time period of the  
362 temporary water shortage emergency under the executive order if the water is used in  
363 accordance with the executive order:

364 (i) for one or more of the following purposes, with preference exercised in the order  
365 listed:

366 (A) drinking;

367 (B) sanitation;

368 (C) fire suppression;

369 (D) commercial agriculture animal welfare needs; or  
370 (E) generation of electricity; and  
371 (ii) by one of the following:  
372 (A) a public water supplier, as defined in Section 73-1-4;  
373 (B) a military facility that was in operation on March 10, 2011;  
374 (C) a commercial agriculture operation for purposes described in Subsection  
375 (1)(a)(i)(D); or  
376 (D) an electric utility; and  
377 (b) use of water for agricultural purposes, including irrigation, livestock watering, or  
378 food processing, is preferred over other rights, except as provided in Subsection (1)(a).  
379 (2) A preference for fire suppression under Subsection (1) is in addition to the  
380 governor's authorization to use water sources as necessary for fire suppression under  
381 Subsection 53-2a-204(1)(o).  
382 (3) The state engineer shall determine, consistent with the executive order declaring a  
383 temporary water shortage emergency, through a priority schedule, which water rights a person  
384 specified in the executive order as required by Subsection 73-3d-201(1)(c)(iv) may interrupt for  
385 purposes of this section.  
386 (4) (a) A person entitled to make a request who uses water preferentially during a  
387 temporary water shortage emergency shall measure the water taken preferentially during the  
388 temporary water shortage emergency.  
389 (b) A duty to measure under this Subsection (4) does not replace or modify any other  
390 duty to measure water under this title or rules made under this title.  
391 Section 10. Section **73-3d-302** is enacted to read:  
392 **73-3d-302. Emergency planning by a person requesting the declaration of a**  
393 **temporary water shortage emergency.**  
394 A person entitled to make a request seeking a preference under Section 73-3d-301 by  
395 requesting that the governor declare a temporary water shortage emergency may exercise a  
396 preference under Section 73-3d-301 only if:  
397 (1) (a) the person entitled to make a request adopts an emergency response plan before  
398 the declaration of a temporary water shortage emergency if the person entitled to make a  
399 request is a community water system, as defined in Section 19-4-102, serving a population of

400 more than 3,300; or

401 (b) the governor includes a statement in the executive order that the person entitled to  
402 make a request is eligible to exercise a preference under Section [73-3d-301](#) notwithstanding  
403 that the person entitled to make a request who is described in Subsection (1)(a)(i) has not  
404 adopted an emergency response plan before the declaration of a temporary water shortage  
405 emergency; or

406 (2) the person entitled to make a request is not described in Subsection (1)(a).

407 Section 11. Section **73-3d-401** is enacted to read:

408 **Part 4. Compensation**

409 **73-3d-401. Definitions.**

410 As used in this part:

411 (1) "Arbitration" means a private hearing before a neutral or panel of neutrals from the  
412 department who hear the evidence, consider the contentions of the parties, and enters a written  
413 award to resolve the issues presented.

414 (2) "Consequential damages" means the losses or injuries from the exercise of a  
415 preference under this chapter that is reasonably foreseeable to someone familiar with the  
416 industry where use is being made of the water at the time the preference is exercised.

417 (3) "Department" means the Department of Agriculture and Food.

418 (4) "Fund" means the Water Preference Compensation Fund created in Section  
419 [73-3d-402](#).

420 (5) "Interrupted user" means a person entitled to the use of water, as defined in  
421 Subsection [73-3-3](#)(1)(d), whose water use is interrupted by the preferential use of water under  
422 this chapter.

423 (6) "Mediation" means a private forum in which one or more impartial persons from  
424 the department facilitate communication between the interrupted user and the preferential user  
425 to promote a mutually acceptable resolution or settlement.

426 (7) "Preferential user" means a person specified in the executive order declaring a  
427 temporary water shortage emergency who uses water preferentially during the temporary water  
428 shortage emergency.

429 Section 12. Section **73-3d-402** is enacted to read:

430 **73-3d-402. Water Preference Compensation Fund.**

- 431 (1) There is created a revolving loan fund known as the "Water Preference  
432 Compensation Fund."
- 433 (2) The fund consists of:
- 434 (a) money received for the repayment of loans made from the fund under Section  
435 73-3d-403;
- 436 (b) appropriations from the Legislature;
- 437 (c) money from a preferential user to reimburse the department for loans made from  
438 the fund under Section 73-3d-403;
- 439 (d) money made available to the state for temporary water shortage emergencies from  
440 any source; and
- 441 (e) interest and earnings on the fund.
- 442 (3) The state treasurer shall invest the money in the fund according to Title 51, Chapter  
443 7, State Money Management Act, except that interest or other earnings derived from those  
444 investments shall be deposited into the fund.
- 445 (4) The department may use money in the fund only to:
- 446 (a) provide a loan to an interrupted user under Subsection 73-3d-403(5); and  
447 (b) pay the costs to the department of administrating this chapter.
- 448 Section 13. Section **73-3d-403** is enacted to read:
- 449 **73-3d-403. Payment of compensation.**
- 450 (1) (a) A preferential user shall pay an interrupted user an amount equal to the total of  
451 the following:
- 452 (i) the reasonable value of the water interrupted by the preferential use;  
453 (ii) applicable crop losses;  
454 (iii) other consequential damages incurred as a result of the interruption; and  
455 (iv) interest on the amounts described in Subsections (1)(a)(i), (ii), and (iii) in the  
456 amount of 8% per annum.
- 457 (b) Interest described in Subsection (1)(a)(iv) shall start the day on which the  
458 preferential user first begins to take water preferentially.
- 459 (c) A preferential user shall pay an interrupted user the amount described in Subsection  
460 (1)(a) by the later of 30 days from the day on which:
- 461 (i) the preferential user stops diverting water preferentially under this chapter; or

462 (ii) mediation or arbitration under Subsection (2) is complete.

463 (d) (i) Once an interrupted user informs the preferential user of the amount owed under  
464 Subsection (1)(a), the preferential user has the burden of proof to prove, by a preponderance of  
465 the evidence, that an amount different from that asserted by the interrupted user is owed under  
466 Subsection (1)(a).

467 (ii) The burden of proof described in this Subsection (1)(d) applies throughout the  
468 process of paying compensation, including during mediation, arbitration, or a court action.

469 (2) (a) (i) If the interrupted user or the preferential user requests mediation, the  
470 department shall mediate a dispute over the application of this section.

471 (ii) If the interrupted user and the preferential user jointly request arbitration, the  
472 department shall arbitrate a dispute over the application of this section.

473 (b) In conducting mediation under this Subsection (2), Title 78B, Chapter 10, Utah  
474 Uniform Mediation Act, applies.

475 (c) (i) In conducting arbitration under this Subsection (2), the department shall follow  
476 the Title 78B, Chapter 11, Utah Uniform Arbitration Act.

477 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and  
478 parties shall treat the matter as if:

479 (A) the arbitration was ordered by a court; and

480 (B) the department was appointed as arbitrator by the court.

481 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be  
482 arbitrated is not already the subject of legal action, the district court having jurisdiction over  
483 the county where the preferential use of water involved in the dispute is located is the court  
484 referred to in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

485 (iv) Arbitration by the department is not necessary before bringing legal action to  
486 adjudicate a claim under this section. The lack of arbitration by the department does not  
487 constitute, and may not be interpreted as constituting, a failure to exhaust available  
488 administrative remedies or as a bar to bringing legal action.

489 (v) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative  
490 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

491 (vi) Within 30 days after an arbitrator issues a final award, any party to the arbitration  
492 may submit the dispute, the award, or any issue upon which the award is based, to the district



493 court for review by trial de novo unless the parties agree in advance of arbitration that the  
494 arbitration is binding and that no de novo review may occur.

495 (3) (a) If the persons described in Subsection (2) participate in mediation or arbitration  
496 under Subsection (2), at the conclusion of the mediation or arbitration, the preferential user  
497 shall pay the interrupted user an amount equal to the lesser of:

498 (i) the amount of actual attorney fees incurred; or

499 (ii) \$15,000.

500 (b) An interrupted user or preferential user may not seek mediation or arbitration by the  
501 Office of the Property Rights Ombudsman under Title 13, Chapter 43, Property Rights  
502 Ombudsman Act.

503 (4) In an action when the court is asked to determine the amount described in  
504 Subsection (1), the court shall award costs and reasonable attorney fees:

505 (a) to the interrupted user if the preferential user declines to participate in mediation or  
506 arbitration under Subsection (2);

507 (b) to the preferential user if the interrupted user declines to participate in mediation or  
508 arbitration under Subsection (2);

509 (c) to the interrupted user if the amount determined by the court is 85% or more of:

510 (i) the final amount offered by the interrupted user as part of the mediation described in  
511 Subsection (2)(a); or

512 (ii) the final amount determined by the department as a result of arbitration described  
513 in Subsection (2); and

514 (d) to the preferential user if the amount determined by the court is less than 85% of:

515 (i) the final amount offered by the interrupted user as part of the mediation described in  
516 Subsection (2)(a); or

517 (ii) the final amount determined by the department as a result of arbitration described  
518 in Subsection (2).

519 (5) (a) In accordance with this Subsection (5), an interrupted user may apply for one or  
520 more 0% interest loans from the department to compensate the interrupted user while the  
521 interrupted user is waiting to be compensated by the preferential user under this section.

522 (b) Before the department may make a loan under this Subsection (5) to an interrupted  
523 user, the interrupted user shall apply for the loan by:

- 524 (i) providing information sufficient to establish to the satisfaction of the department:  
525 (A) the basis by which the person is entitled to use of the water;  
526 (B) the use of water that would have been made by the person without the interruption;  
527 (C) the length of the interruption;  
528 (D) a good faith estimate of the amount of water the person entitled to the use of water  
529 would otherwise have made;  
530 (E) the losses and consequential damages incurred as a result of the interruption; and  
531 (F) whether the interrupted user has previously received a loan under this Subsection  
532 (5) for the same interruption of water use;  
533 (ii) agreeing in writing to repay the amount of a loan within 30 days of the day on  
534 which the interrupted user is paid in full by the preferential user; and  
535 (iii) providing any other information required by the department by rule.  
536 (c) (i) Once the department obtains a complete application under Subsection (5)(b), the  
537 department shall determine whether the interrupted user is eligible for a loan and the amount to  
538 be loaned using reliable third-party market and producer information, when available, as close  
539 as possible to the beginning date of the water delivery interruption, except that a single loan  
540 may not exceed \$150,000.  
541 (ii) For agriculture commodities, the department may determine unit prices and base  
542 adjustments by using:  
543 (A) applicable United States Department of Agriculture crop pricing data sets;  
544 (B) Utah State University Extension data sets; and  
545 (C) publications, fact sheets, and enterprise budgets data sets published by a university.  
546 (iii) For agriculture commodities, the department may consider documents filed under  
547 Subsection (5)(b) to establish historical production records provided by the interrupted user.  
548 (iv) For nonagricultural products or services, the department may determine the loan  
549 amount using information from:  
550 (A) other state agencies;  
551 (B) federal agencies; and  
552 (C) industry leaders within the state associated with the goods or service forgone by the  
553 interrupted user.  
554 (v) For nonagricultural products or services, the department shall determine the

555 quantity of units of nonagricultural good and services during the temporary water shortage  
556 emergency by using:

557 (A) industry standards, if available; or

558 (B) recent product or service records.

559 (d) The department may issue a loan to an interrupted user only to the extent that there  
560 is money in the fund. The department shall issue loans from the fund in the order that an  
561 interrupted user submits a completed application for the loan.

562 (e) An interrupted user who receives a loan under this Subsection (5) shall repay the  
563 amount of the loan within 30 days of the day on which the interrupted user is paid in full by the  
564 preferential user.

565 (6) (a) If the department determines that the preferential user fails to comply with  
566 Subsection (1), the department may bring suit in a court of competent jurisdiction to require a  
567 preferential user to reimburse the fund for a loan issued under Subsection (5) that is based on  
568 the use of the water by the preferential user.

569 (b) If the department determines that an interrupted user fails to repay a loan in  
570 accordance with Subsection (5), the department may bring suit in a court of competent  
571 jurisdiction to require repayment of the loan.

572 (c) If the department prevails in an action brought under this Subsection (6), the  
573 department may recover amounts owed, court costs, and reasonable attorney fees.

574 (7) The department shall establish by rule made in accordance with Title 63G, Chapter  
575 3, Utah Administrative Rulemaking Act, procedures to:

576 (a) request mediation or arbitration under this section;

577 (b) apply for a loan under Subsection (5)

578 (c) determine the amount to be loaned to an interrupted user under Subsection (5); and

579 (d) provide for the repayment of a loan issued under Subsection (5).

580 Section 14. Section **73-3d-404** is enacted to read:

581 **73-3d-404. Security requirements.**

582 (1) As a condition of participating in mediation or arbitration under Section [73-3d-403](#),  
583 a person specified in the executive order declaring a temporary water shortage emergency shall  
584 post with the department a corporate surety bond, irrevocable letter of credit, trust fund  
585 agreement, or any other security agreement considered reasonable in an amount not less than

586 \$100,000.

587 (2) The bond or other security posted shall be conditioned upon:

588 (a) the faithful performance in mediation or arbitration; and

589 (b) the payment of amounts owed under Section [73-3d-403](#).

590 (3) If the department determines that the conditions of Subsection (2) are not met, the  
591 commissioner of the department shall bring an action upon the bond or other security.

592 Section 15. **Repealer.**

593 This bill repeals:

594 Section [73-3-21.3](#), **Study of preferences during temporary water shortage**  
595 **emergency.**

596 Section [73-3-21.5](#), **Preferences between appropriators.**