

**WATER RELATED LIABILITY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

**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.

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

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

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

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

(b) a latent dangerous or latent defective condition of any public building, structure,

64 dam, reservoir, or other public improvement.

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

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

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

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

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

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

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

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

84 (h) the collection or assessment of taxes;

85 (i) an activity of the Utah National Guard;

86 (j) the incarceration of a person in a state prison, county or city jail, or other place of  
87 legal confinement;

88 (k) a natural condition on publicly owned or controlled land;

89 (l) a condition existing in connection with an abandoned mine or mining operation;

90 (m) an activity authorized by the School and Institutional Trust Lands Administration  
91 or the Division of Forestry, Fire, and State Lands;

92 (n) the operation or existence of a [~~pedestrian or equestrian~~] trail used for recreational  
93 purposes that is along a [~~ditch, canal~~] water facility, as defined in Section 73-1-8, stream, or  
94 river, regardless of ownership or operation of the [~~ditch, canal~~] water facility, stream, or river,

95 if:

96 (i) the trail is designated under a general plan adopted by a municipality under Section  
97 10-9a-401 or by a county under Section 17-27a-401;

98 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public  
99 use as evidenced by a written agreement between:

100 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail  
101 is located; and

102 (B) the municipality or county where the trail is located; and

103 (iii) the written agreement:

104 (A) contains a plan for operation and maintenance of the trail; and

105 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way  
106 where the trail is located has, at a minimum, the same level of immunity from suit as the  
107 governmental entity in connection with or resulting from the use of the trail;

108 (o) research or implementation of cloud management or seeding for the clearing of fog;

109 (p) the management of flood waters, earthquakes, or natural disasters;

110 (q) the construction, repair, or operation of flood or storm systems;

111 (r) the operation of an emergency vehicle, while being driven in accordance with the  
112 requirements of Section 41-6a-212;

113 (s) the activity of:

114 (i) providing emergency medical assistance;

115 (ii) fighting fire;

116 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

117 (iv) an emergency evacuation;

118 (v) transporting or removing an injured person to a place where emergency medical  
119 assistance can be rendered or where the person can be transported by a licensed ambulance  
120 service; or

121 (vi) intervening during a dam emergency;

122 (t) the exercise or performance, or the failure to exercise or perform, any function  
123 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

124 (u) an unauthorized access to government records, data, or electronic information  
125 systems by any person or entity;

(v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road; or

(w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section 53-14-101.

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

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

(1) As used in this section, "water facility" means a dam, pipeline, culvert, fire hydrant, flume, conduit, ditch, head gate, canal, reservoir, storage tank, spring box, well, meter, weir, valve, casing, cap, or other facility used for the diversion, transportation, distribution, measurement, collection, containment, or storage of water.

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

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

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

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

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

(a) the damage or personal injury arises out of, is in connection with, or results from the use of a ~~[pedestrian or equestrian]~~ trail that is:

(i) used for recreational purposes; and

(ii) located along a ~~[ditch, canal]~~ water facility, stream, or river, regardless of ownership or operation of the ~~[ditch, canal]~~ water facility, stream, or river;

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

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

(d) the written agreement:

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

(ii) provides that an owner or operator of the trail right-of-way, or of the right-of-way where the trail is located has, at minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from use of the trail.

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

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

(i) the diversion or discharge of water or another substance into the water facility by a third party without the permission of the owner or operator of the water facility;

(ii) any other act or omission of a third party, other than an employee or agent of the owner or operator of the water facility; or

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

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

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

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

(1) As used in this section:

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

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

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

(iii) to cut into or breach a canal or ditch bank for the purpose of introducing water or another substance into or of taking water from the canal or ditch.

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

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

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

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

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

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

(ii) having other lawful authority; or

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

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

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

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

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

219           (6) (a) "Person" for purposes of this section does not include a government entity,  
220 including a political subdivision of the state.

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