

EMERGENCY WATER SHORTAGES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

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:

None

Utah Code Sections Affected:

AMENDS:

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

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

63C-25-101, as enacted by Laws of Utah 2022, Chapter 207 and last amended by

Coordination Clause, Laws of Utah 2022, Chapter 207

33 **63G-7-302**, as last amended by Laws of Utah 2022, Chapter 388

34 ENACTS:

35 **73-3d-101**, Utah Code Annotated 1953

36 **73-3d-102**, Utah Code Annotated 1953

37 **73-3d-201**, Utah Code Annotated 1953

38 **73-3d-202**, Utah Code Annotated 1953

39 **73-3d-301**, Utah Code Annotated 1953

40 **73-3d-302**, Utah Code Annotated 1953

41 **73-3d-401**, Utah Code Annotated 1953

42 **73-3d-402**, Utah Code Annotated 1953

43 **73-3d-403**, Utah Code Annotated 1953

44 **73-3d-404**, Utah Code Annotated 1953

45 REPEALS:

46 **73-3-21.3**, as enacted by Laws of Utah 2022, Chapter 311

47 **73-3-21.5**, as enacted by Laws of Utah 2022, Chapter 311

48

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

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

51 **4-2-103. Functions, powers, and duties of department -- Fees for services --**

52 **Marketing orders -- Procedure -- Purchasing and auditing.**

53 (1) The department shall:

54 (a) inquire into and promote the interests and products of agriculture and allied
55 industries;

56 (b) promote methods for increasing the production and facilitating the distribution of
57 the agricultural products of the state;

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

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

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

- (e) issue marketing orders for any designated agricultural product to:
- (i) promote orderly market conditions for any product;
 - (ii) give the producer a fair return on the producer's investment at the marketplace; and
 - (iii) only promote and not restrict or restrain the marketing of Utah agricultural commodities;
- (f) administer and enforce all laws assigned to the department by the Legislature;
- (g) establish standards and grades for agricultural products and fix and collect reasonable fees for services performed by the department in conjunction with the grading of agricultural products;
- (h) establish operational standards for any establishment that manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;
- (i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;
- (j) when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning matters related to agriculture;
- (k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;
- (ii) establish and enforce quarantines;
- (iii) issue and enforce orders and rules for the control and eradication of pests, wherever they may exist within the state; and
- (iv) perform other duties relating to plants and plant products considered advisable and not contrary to law;
- (l) inspect apiaries for diseases inimical to bees and beekeeping;
- (m) take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;
- (n) provide for the coordination of state conservation efforts, including by:
- (i) assisting the Conservation Commission in the administration of Chapter 18, Conservation Commission Act;
 - (ii) implementing Chapter 46, Conservation Coordination Act, including entering into agreements with other state agencies; and

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

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

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

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

(i) under this title;

(ii) by the department; or

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

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

(i) conduct mediation or arbitration; and

(ii) administer the Water Preference Compensation Fund; and

~~(+)~~ (s) perform any additional functions, powers, and duties provided by law.

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

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

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

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

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

(b) (i) The department may establish boards of control to administer marketing orders and the proceeds derived from any order.

(ii) A board of control shall:

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

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

(4) Money collected by grain grading, as provided by Subsection (1)(g), shall be

deposited into the General Fund as dedicated credits for the grain grading program.

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

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

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

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

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

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

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

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

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

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

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

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

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

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

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

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

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

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

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

(k) the Navajo Revitalization Fund, created in Section 35A-8-1704; [and]

(l) the Energy Efficiency Fund, created in Section 11-45-201[-]; and

157 (m) the Water Preference Compensation Fund created in Section 73-3d-401.

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

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

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

165 **63C-25-101. Definitions.**

166 As used in this chapter:

167 (1) "Authority" means the same as that term is defined in Section 63B-1-303.

168 (2) "Bond" means the same as that term is defined in Section 63B-1-101.

169 (3) "Bonding political subdivision" means:

- 170 (a) the Utah Inland Port Authority, created in Section 11-58-201;
- 171 (b) the Military Installation Development Authority, created in Section 63H-1-201;
- 172 (c) the Point of the Mountain State Land Authority, created in Section 11-59-201; or
- 173 (d) the Utah Lake Authority, created in Section 11-65-201.

174 (4) "Commission" means the State Finance Review Commission created in Section
175 63C-25-201.

176 (5) "Concessionaire" means a person who:

- 177 (a) operates, finances, maintains, or constructs a government facility under a contract
178 with a bonding political subdivision; and
- 179 (b) is not a bonding political subdivision.

180 (6) "Creating entity" means the same as that term is defined in Section 17D-4-102.

181 (7) "Government facility" means infrastructure, improvements, or a building that:

- 182 (a) costs more than \$5,000,000 to construct; and
- 183 (b) has a useful life greater than five years.

184 (8) "Large public transit district" means the same as that term is defined in Section
185 17B-2a-802.

186 (9) "Loan entity" means the board, person, unit, or agency with legal responsibility for
187 making a loan from a revolving loan fund.

188 (10) "Obligation" means the same as that term is defined in Section 63B-1-303.

189 (11) "Parameters resolution" means a resolution of a bonding political subdivision, or
190 public infrastructure district created by a bonding political subdivision, that sets forth for
191 proposed bonds:

192 (a) the maximum:

193 (i) amount of bonds;

194 (ii) term; and

195 (iii) interest rate; and

196 (b) the expected security for the bonds.

197 (12) "Public infrastructure district" means a public infrastructure district created under
198 Title 17D, Chapter 4, Public Infrastructure District Act.

199 (13) "Public-private partnership" means a contract:

200 (a) between a bonding political subdivision and a concessionaire for the operation,
201 finance, maintenance, or construction of a government facility;

202 (b) that authorizes the concessionaire to operate the government facility for a term of
203 five years or longer, including any extension of the contract; and

204 (c) in which all or some of the annual source of payment to the concessionaire comes
205 from state funds provided to the bonding political subdivision.

206 (14) "Revolving loan fund" means:

207 (a) the Water Resources Conservation and Development Fund, created in Section
208 73-10-24;

209 (b) the Water Resources Construction Fund, created in Section 73-10-8;

210 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

211 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean
212 Fuels and ~~[Vehicle]~~ Emission Reduction Technology Program Act;

213 (e) the Water Development Security Fund and its subaccounts, created in Section
214 73-10c-5;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the inland port infrastructure revolving loan fund;

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

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

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

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

(b) "State funds" does not include:

(i) a revolving loan fund; or

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

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

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

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

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

63G-7-302. Assessment of compensation and damages in an action for taking or damaging private property.

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

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

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

CHAPTER 3d. WATER PREFERENCES DURING EMERGENCIES

Part 1. General Provisions

73-3d-101. Definitions.

As used in this chapter:

(1) "Electric utility" means:

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

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

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

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

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

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

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

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

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

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

(c) a person who provides water using an approved but unperfected application or a perfected water right with the written authorization of a person described in Subsection (3)(a) or (b).

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

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

73-3d-102. Scope of chapter.

(1) (a) The powers vested in the governor under this chapter are in addition to, and not

in lieu of, any other emergency powers otherwise statutorily vested in the governor, including the power of the governor to authorize the use of water sources as necessary for fire suppression under Subsection 53-2a-204(1)(o).

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

(2) Nothing in this chapter modifies:

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

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

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

Part 2. Declaration of Temporary Water Shortage Emergency

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

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

(i) threatens:

(A) the availability or quality of an essential water supply or water supply infrastructure; or

(B) the operation of the economy; and

(ii) because of the threats described in Subsection (1)(a)(i), jeopardizes the peace, health, safety, or welfare of the people of this state.

(b) The governor may only issue the executive order declaring a temporary water shortage emergency described in Subsection (1)(a):

(i) with the advice and recommendation of the state engineer; and
(ii) in consultation with the emergency management administration committee created
by Section 53-2a-105.

(c) An executive order issued under this Subsection (1) shall state with specificity:

(i) the nature of the interruption of water supply;
(ii) subject to Subsection (2), the time period for which the temporary water shortage
emergency is declared;

(iii) a description of the geographic area that is subject to the executive order;

(iv) a list of the specific persons entitled to make a request who may exercise the
preferential use of water under Section 73-3d-301 during the effective period of the temporary
water shortage emergency; and

(v) the purposes outlined in Subsection 73-3d-301(1) for which a person who is
described in Subsection (1)(c)(iv) may take the water subject to Section 73-3d-301.

(d) Before providing a recommendation to the governor under Subsection (1)(b)(i), the
state engineer shall require a person entitled to make a request who is described in Subsection
(1)(c)(iv) to provide a written statement describing how the person entitled to make a request
has exhausted other reasonable means to acquire water.

(e) A person entitled to make a request who is described in Subsection (1)(c)(iv) may
take water preferentially during a temporary water shortage emergency only for a purpose
authorized by the executive order.

(f) (i) Within seven calendar days of the day on which the governor issues an executive
order declaring a temporary water shortage emergency, the Legislative Management
Committee shall:

(A) review the executive order; and

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

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

(2) (a) The governor shall state in an executive order declaring a temporary water
shortage emergency the time period for which the temporary water shortage emergency is
declared, except that the governor may not declare a temporary water shortage emergency for

longer than six months from the date the executive order is issued.

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

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

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

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

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

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

Part 3. Preferences Under a Temporary Water Shortage Emergency

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

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

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

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

(A) drinking;

(B) sanitation;

(C) fire suppression;

(D) commercial agriculture animal welfare needs; or

(E) generation of electricity; and

(ii) by one of the following:

(A) a public water supplier, as defined in Section 73-1-4;

(B) a military facility that was in operation on March 10, 2011;

(C) a commercial agriculture operation for purposes described in Subsection

(1)(a)(i)(D); or

(D) an electric utility; and

(b) use of water for agricultural purposes, including irrigation, livestock watering, or food processing, is preferred over other rights, except as provided in Subsection (1)(a).

(2) A preference for fire suppression under Subsection (1) is in addition to the governor's authorization to use water sources as necessary for fire suppression under Subsection 53-2a-204(1)(o).

(3) The state engineer shall determine, consistent with the executive order declaring a temporary water shortage emergency, through a priority schedule, which water rights a person specified in the executive order as required by Subsection 73-3d-201(1)(c)(iv) may interrupt for purposes of this section.

(4) (a) A person entitled to make a request who uses water preferentially during a temporary water shortage emergency shall measure the water taken preferentially during the temporary water shortage emergency.

(b) A duty to measure under this Subsection (4) does not replace or modify any other duty to measure water under this title or rules made under this title.

Section 10. Section **73-3d-302** is enacted to read:

73-3d-302. Emergency planning by a person requesting the declaration of a temporary water shortage emergency.

A person entitled to make a request seeking a preference under Section 73-3d-301 by requesting that the governor declare a temporary water shortage emergency may exercise a preference under Section 73-3d-301 only if:

(1) (a) the person entitled to make a request adopts an emergency response plan before the declaration of a temporary water shortage emergency if the person entitled to make a request is a community water system, as defined in Section 19-4-102, serving a population of more than 3,300; or

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

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

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

Part 4. Compensation

73-3d-401. Definitions.

As used in this part:

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

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

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

(4) "Fund" means the Water Preference Compensation Fund created in Section 73-3d-402.

(5) "Interrupted user" means a person whose water use is interrupted by the preferential use of water under this chapter.

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

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

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

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

(1) There is created a revolving loan fund known as the "Water Preference Compensation Fund."

(2) The fund consists of:

(a) money received for the repayment of loans made from the fund under Section 73-3d-403;

(b) appropriations from the Legislature;

(c) money from a preferential user to reimburse the department for loans made from the fund under Section 73-3d-403;

(d) money made available to the state for temporary water shortage emergencies from any source; and

(e) interest and earnings on the fund.

(3) The state treasurer shall invest the money in the fund according to Title 51, Chapter 7, State Money Management Act, except that interest or other earnings derived from those investments shall be deposited into the fund.

(4) The department may use money in the fund only to:

(a) provide a loan to an interrupted user under Subsection 73-3d-403(5); and

(b) pay the costs to the department of administering this chapter.

Section 13. Section **73-3d-403** is enacted to read:

73-3d-403. Payment of compensation.

(1) (a) A preferential user shall pay an interrupted user an amount equal to the total of the following:

(i) the reasonable value of the water interrupted by the preferential use;

(ii) applicable crop losses;

(iii) other consequential damages incurred as a result of the interruption; and

(iv) interest on the amounts described in Subsections (1)(a)(i), (ii), and (iii) in the amount of 8% per annum.

(b) Interest described in Subsection (1)(a)(iv) shall start the day on which the preferential user first begins to take water preferentially.

(c) A preferential user shall pay an interrupted user the amount described in Subsection (1)(a) by the later of 30 days from the day on which:

(i) the preferential user stops diverting water preferentially under this chapter; or

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

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

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

(2) (a) (i) If the interrupted user or the preferential user requests mediation, the

department shall mediate a dispute over the application of this section.

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

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

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

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

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

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

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

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

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

(vi) Within 30 days after an arbitrator issues a final award, any party to the arbitration may submit the dispute, the award, or any issue upon which the award is based, to the district court for review by trial de novo unless the parties agree in advance of arbitration that the arbitration is binding and that no de novo review may occur.

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

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

(ii) \$15,000.

(b) An interrupted user or preferential user may not seek mediation or arbitration by the

498 Office of the Property Rights Ombudsman under Title 13, Chapter 43, Property Rights
499 Ombudsman Act.

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

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

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

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

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

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

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

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

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

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

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

521 (i) providing information sufficient to establish to the satisfaction of the department:

522 (A) the basis by which the person is entitled to use of the water;

523 (B) the use of water that would have been made by the person without the interruption;

524 (C) the length of the interruption;

525 (D) a good faith estimate of the amount of water the person entitled to the use of water
526 would otherwise have made;

527 (E) the losses and consequential damages incurred as a result of the interruption; and

528 (F) whether the interrupted user has previously received a loan under this Subsection

529 (5) for the same interruption of water use;
530 (ii) agreeing in writing to repay the amount of a loan within 30 days of the day on
531 which the interrupted user is paid in full by the preferential user; and
532 (iii) providing any other information required by the department by rule.
533 (c) (i) Once the department obtains a complete application under Subsection (5)(b), the
534 department shall determine whether the interrupted user is eligible for a loan and the amount to
535 be loaned using reliable third-party market and producer information, when available, as close
536 as possible to the beginning date of the water delivery interruption, except that a single loan
537 may not exceed \$150,000.
538 (ii) For agriculture commodities, the department may determine unit prices and base
539 adjustments by using:
540 (A) applicable United States Department of Agriculture crop pricing data sets;
541 (B) Utah State University Extension data sets; and
542 (C) publications, fact sheets, and enterprise budgets data sets published by a university.
543 (iii) For agriculture commodities, the department may consider documents filed under
544 Subsection (5)(b) to establish historical production records provided by the interrupted user.
545 (iv) For nonagricultural products or services, the department may determine the loan
546 amount using information from:
547 (A) other state agencies;
548 (B) federal agencies; and
549 (C) industry leaders within the state associated with the goods or service forgone by the
550 interrupted user.
551 (v) For nonagricultural products or services, the department shall determine the
552 quantity of units of nonagricultural good and services during the temporary water shortage
553 emergency by using:
554 (A) industry standards, if available; or
555 (B) recent product or service records.
556 (d) The department may issue a loan to an interrupted user only to the extent that there
557 is money in the fund. The department shall issue loans from the fund in the order that an
558 interrupted user submits a completed application for the loan.
559 (e) An interrupted user who receives a loan under this Subsection (5) shall repay the

amount of the loan within 30 days of the day on which the interrupted user is paid in full by the preferential user.

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

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

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

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

(a) request mediation or arbitration under this section;

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

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

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

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

73-3d-404. Security requirements.

(1) As a condition of participating in mediation or arbitration under Section 73-3d-403, a person specified in the executive order declaring a temporary water shortage emergency shall post with the department a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than \$100,000.

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

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

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

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

Section 15. Repealer.

This bill repeals:

591 Section **73-3-21.3, Study of preferences during temporary water shortage**
592 **emergency.**
593 Section **73-3-21.5, Preferences between appropriators.**