

**WATER RELATED LIABILITY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl R. Albrecht**

Senate Sponsor: Derrin R. Owens

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**LONG TITLE**

**Committee Note:**

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

Legislative Vote: 14 voting for 1 voting against 4 absent

**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:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63G-7-201**, as last amended by Laws of Utah 2021, Chapter 352

32 **73-1-8**, as last amended by Laws of Utah 2007, Chapter 357

33 **73-1-14**, as last amended by Laws of Utah 2022, Chapter 310



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

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

37 **63G-7-201. Immunity of governmental entities and employees from suit.**

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

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

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

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

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

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

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

55 (A) an emergency shelter;

56 (B) housing;

57 (C) a staging place; or

58 (D) a medical facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (h) the collection or assessment of taxes;  
91 (i) an activity of the Utah National Guard;  
92 (j) the incarceration of a person in a state prison, county or city jail, or other place of  
93 legal confinement;

94 (k) a natural condition on publicly owned or controlled land;  
95 (l) a condition existing in connection with an abandoned mine or mining operation;  
96 (m) an activity authorized by the School and Institutional Trust Lands Administration  
97 or the Division of Forestry, Fire, and State Lands;

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

102 (i) the trail is designated under a general plan adopted by a municipality under Section  
103 10-9a-401 or by a county under Section 17-27a-401;

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

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

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

109 (iii) the written agreement:

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

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

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

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

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

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

119 (s) the activity of:

120 (i) providing emergency medical assistance;

- 121 (ii) fighting fire;
- 122 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 123 (iv) an emergency evacuation;
- 124 (v) transporting or removing an injured person to a place where emergency medical  
125 assistance can be rendered or where the person can be transported by a licensed ambulance  
126 service; or
- 127 (vi) intervening during a dam emergency;
- 128 (t) the exercise or performance, or the failure to exercise or perform, any function  
129 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 130 (u) an unauthorized access to government records, data, or electronic information  
131 systems by any person or entity;
- 132 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a  
133 public or private road; or
- 134 (w) a communication between employees of one or more law enforcement agencies  
135 related to the employment, disciplinary history, character, professional competence, or physical  
136 or mental health of a peace officer, or a former, current, or prospective employee of a law  
137 enforcement agency, including any communication made in accordance with Section  
138 53-14-101.

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

140 **73-1-8. Duties of owners or operators -- Bridges and trails -- Liability.**

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

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

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

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

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

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

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

160 (i) used for recreational purposes; and

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

163 (b) the trail is designated under a general plan adopted by a municipality under Section  
 164 [10-9a-401](#) or by a county under Section [17-27a-401](#);

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

169 (d) the written agreement:

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

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

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

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

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

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

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

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

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

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

190            (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

212            (ii) having other lawful authority; or

213            (b) without lawful authority, knowingly interferes with an individual authorized to

214 apportion water while in the discharge of the individual's duties.

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

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

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

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

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

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