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H.B. 150
3rd Sub. (Cherry)

Senator Michael K. McKell proposes the following substitute bill:

EMERGENCY WATER SHORTAGES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Michael K. McKell

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;
- provides for the use of money in the Agriculture Resource Development Fund for emergency water shortages loans;
- 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; 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:

This bill appropriates for fiscal year 2024:

- to the Department of Agriculture and Food - Agriculture Resource Development Fund, as a one-time appropriation:
  - from the General Fund, $5,000,000.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

4-18-105, as last amended by Laws of Utah 2022, Chapter 68

4-18-106, as last amended by Laws of Utah 2022, Chapter 79

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

ENACTS:

73-3d-101, Utah Code Annotated 1953

73-3d-102, Utah Code Annotated 1953

73-3d-201, Utah Code Annotated 1953

73-3d-202, Utah Code Annotated 1953

73-3d-301, Utah Code Annotated 1953

73-3d-302, Utah Code Annotated 1953

73-3d-401, Utah Code Annotated 1953

73-3d-402, Utah Code Annotated 1953

73-3d-403, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

(1) The department shall:

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

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

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

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

(d) encourage experiments designed to determine the best means and methods for the 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) assist in the issuance of loans by the Conservation Commission; and

[~~(r)~~] (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 **4-18-105** is amended to read:

4-18-105. Conservation Commission -- Functions and duties.

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to:

(i) protect, conserve, use, and develop the soil, water, and air resources of the state; and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually the information required in Section 17D-3-103;

(e) approve and make loans for [~~agricultural~~] purposes listed in Section 4-18-106, through the loan advisory board described in Section 4-18-106, from the Agriculture Resource Development Fund;

(f) seek to obtain and administer federal or state money in accordance with applicable federal or state guidelines and make loans or grants from that money to an eligible entity, as defined by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the preservation of soil, water, and air resources, or for a reason set forth in Section 4-18-108;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) when assigned by the governor, when required by contract with the Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:

(i) develop programs for the prevention, control, or abatement of new or existing pollution to the soil, water, or air of the state;

(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;

(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;

(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;

(v) meet the requirements of federal law related to water and air pollution in the exercise of the commission's powers and duties; and

(vi) establish administrative penalties relating to agricultural discharges as defined in Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm;

and

(i) coordinate with the Division of Conservation created in Section 4-46-401.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise the commission's powers;

(c) take necessary action to promote and enforce the purpose and findings of Section 4-18-102;

(d) sue and be sued; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

Section 3. Section **4-18-106** is amended to read:

4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund money -- Advisory board.

(1) As used in this section:

(a) "Disaster" means an extraordinary circumstance, including a flood, drought, or fire, that results in:

(i) the president of the United States declaring an emergency or major disaster in the state;

(ii) the governor declaring a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act; or

(iii) the chief executive officer of a local government declaring a local emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

(b) "Fund" means the Agriculture Resource Development Fund created in this section.

[~~(b)~~] (c) "Local government" means the same as that term is defined in Section 53-2a-602.

(2) There is created a revolving loan fund known as the "Agriculture Resource Development Fund."

(3) The [~~Agriculture Resource Development Fund~~] fund shall consist of:

(a) money appropriated to the fund by the Legislature;

(b) sales and use tax receipts transferred to the fund in accordance with Section 59-12-103;

(c) money received for the repayment of loans made from the fund;

(d) money from a preferential user to reimburse the commission for loans made from the fund in accordance with Title 73, Chapter 3d, Part 4, Compensation;

[~~(d)~~] (e) money made available to the state for agriculture resource development or for a temporary water shortage emergency, as defined in Section 73-3d-101, from any source; and

[~~(e)~~] (f) interest earned on the fund.

(4) The commission may make loans from the [~~Agriculture Resource Development Fund~~] fund for:

(a) a rangeland improvement and management project;

(b) a watershed protection or flood prevention project;

(c) a soil and water conservation project;

(d) a program designed to promote energy efficient farming practices;

(e) an improvement program for agriculture product storage or program designed to protect a crop or animal resource;

(f) a hydroponic or aquaponic system;

(g) a project or program to improve water quality;

(h) a project to address other environmental issues; [~~or~~]

(i) subject to Subsection (5), a disaster relief program designed to aid the sustainability of agriculture during and immediately following a disaster[~~.~~]; or

(j) subject to Subsection (6), authorized for temporary water shortage emergencies as provided in Title 73, Chapter 3d, Part 4, Compensation.

(5) (a) Loans made through a disaster relief program described in Subsection (4)(i) may not comprise more than 10% of the funds appropriated by the Legislature to the [~~Agriculture Resource Development Fund~~] fund.

(b) Notwithstanding Subsection (5)(a), the department may use [~~all~~] the money appropriated to the [~~Agriculture Resource Development Fund~~] fund by the Legislature or another source, without limitation, if the money is appropriated specifically for use in a disaster relief program.

(c) (i) Until December 31, 2024, the department is authorized to borrow up to $3,000,000 of General Fund appropriations from the Agricultural Water Optimization Account created in Section 73-10g-204 to be used in making loans through a disaster relief program described in Subsection (4)(i).

(ii) If the department borrows from the Agricultural Water Optimization Account under Subsection (5)(c)(i), the department shall deposit the repayment of principal and interest on loans made through a disaster relief program, regardless of the source of the funds used to make those loans, into the Agricultural Water Optimization Account, with preference over the repayment of any other source of funds, until the Agricultural Water Optimization Account is repaid in full.

(6) The commission may not have at one time an aggregate amount of loans made under Subsection (4)(j) that exceeds $5,000,000.

[~~(6)~~] (7) The commission may appoint an advisory board to:

(a) oversee the award process for loans, as described in this section;

(b) approve loans; and

(c) recommend policies and procedures for the [~~Agriculture Resource Development Fund~~] fund that are consistent with statute.

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.

(3) Nothing in this chapter may be construed to extend or enlarge the powers of the governor except as specifically stated in this chapter.

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;

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

(C) recommend to the Legislature whether the executive order should be kept as issued by the governor, extended, or terminated.

(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 30 days after 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) An executive order declaring a temporary water emergency issued by the governor within 30 days of the expiration or termination of a prior executive order for the same emergency is considered an extension subject to Subsection (2)(e).

(d) 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.

(e) An executive order declaring a temporary water shortage emergency may be renewed or extended only by joint resolution of the Legislature.

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) "Commission" means the Conservation Commission created in Section 4-18-104.

(3) "Consequential damages" means the losses or injuries from the exercise of a preference under this chapter that result in material losses to an interrupted user and that are reasonably foreseeable to someone familiar with the industry where use is being made of the water at the time the preference is exercised, including:

(a) loss of sales or operating revenue;

(b) damage to equipment; or

(c) damage to capital facilities or operational assets.

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

(5) "Fund" means the Agriculture Resource Development Fund created in Section 4-18-106.

(6) "Interrupted user"means a person whose beneficial use of water is interrupted by the preferential use of water under this chapter, and is:

(a) the holder or lessee of an approved application to appropriate water that is interrupted;

(b) the record or equitable holder or lessee of a perfected water right that is interrupted; or

(c) the owner, lessor, or lessee of a right to use water that is represented by shares of stock in a mutual water company whose water rights are interrupted.

(7) "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.

(8) "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. 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 Office of the Property Rights Ombudsman under Title 13, Chapter 43, Property Rights Ombudsman Act.

(4) In an action when the court is asked to determine the amount described in

Subsection (1), the court shall award costs and reasonable attorney fees:

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) the length of the interruption;

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

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

(F) whether the interrupted user has previously received a loan under this Subsection (5) for the same interruption of water use;

(ii) agreeing in writing to repay the amount of a loan within 30 days of the day on which the interrupted user is paid in full by the preferential user; and

(iii) providing any other information required by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) (i) Once the commission obtains a complete application under Subsection (5)(b), the commission shall determine whether the interrupted user is eligible for a loan and the amount to be loaned using reliable third-party market and producer information, when available, as close as possible to the beginning date of the water delivery interruption, except that a single loan may not exceed $150,000.

(ii) For agriculture commodities, the commission may determine unit prices and base adjustments by using:

(A) applicable United States Department of Agriculture crop pricing data sets;

(B) Utah State University Extension data sets; and

(C) publications, fact sheets, and enterprise budgets data sets published by a university.

(iii) For agriculture commodities, the commission may consider documents filed under Subsection (5)(b) to establish historical production records provided by the interrupted user.

(iv) For nonagricultural products or services, the commission may determine the loan amount using information from:

(A) other state agencies;

(B) federal agencies; and

(C) industry leaders within the state associated with the goods or service forgone by the interrupted user.

(v) For nonagricultural products or services, the commission shall determine the quantity of units of nonagricultural good and services during the temporary water shortage emergency by using:

(A) industry standards, if available; or

(B) recent product or service records.

(d) The commission may issue a loan to an interrupted user only to the extent that there is money in the fund and the limit on outstanding loans from the fund under Subsection 4-18-106(6) has not been met. The commission shall issue loans from the fund in the order that an interrupted user submits a completed application for the loan.

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

73-3d-403. 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 14. **Repealer.**

This bill repeals:

Section **73-3-21.3, Study of preferences during temporary water shortage**

emergency.

Section **73-3-21.5, Preferences between appropriators.**

Section 15. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Agriculture and Food - Agriculture Resource Development Fund

From General Fund, One-time		5,000,000
Schedule of Programs:		
Agriculture Resource Development Fund	5,000,000	