

1 **EXPANSION OF GOVERNMENTAL IMMUNITY**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Roger E. Barrus**

5 **This act modifies the Utah Governmental Immunity Act by extending governmental**
6 **immunity to cover publicly maintained subsurface drainage systems.**

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **63-30-3**, as last amended by Chapters 15 and 248, Laws of Utah 1991

10 **63-30-10**, as last amended by Chapter 185, Laws of Utah 2001

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

12 Section 1. Section **63-30-3** is amended to read:

13 **63-30-3. Immunity of governmental entities from suit.**

14 (1) Except as may be otherwise provided in this chapter, all governmental entities are
15 immune from suit for any injury which results from the exercise of a governmental function,
16 governmentally owned hospital, nursing home, or other governmental health care facility, and from
17 an approved medical, nursing, or other professional health care clinical training program conducted
18 in either public or private facilities.

19 (2) (a) For the purposes of this chapter only, the following state medical programs and
20 services performed at a state-owned university hospital are unique or essential to the core of
21 governmental activity in this state and are considered to be governmental functions:

22 (i) care of a patient referred by another hospital or physician because of the high risk nature
23 of the patient's medical condition;

24 (ii) high risk care or procedures available in Utah only at a state-owned university hospital
25 or provided in Utah only by physicians employed at a state-owned university acting in the scope
26 of their employment;

27 (iii) care of patients who cannot receive appropriate medical care or treatment at another



28 medical facility in Utah; and

29 (iv) any other service or procedure performed at a state-owned university hospital or by
30 physicians employed at a state-owned university acting in the scope of their employment that a
31 court finds is unique or essential to the core of governmental activity in this state.

32 (b) If any claim under this subsection exceeds the limits established in Section 63-30-34,
33 the claimant may submit the excess claim to the Board of Examiners and the Legislature under
34 Title 63, Chapter 6.

35 (3) The management of flood waters and other natural disasters and the construction,
36 repair, and operation of flood and storm systems or subsurface drainage systems by governmental
37 entities are considered to be governmental functions, and governmental entities and their officers
38 and employees are immune from suit for any injury or damage resulting from those activities.

39 (4) Officers and employees of a Children's Justice Center are immune from suit for any
40 injury which results from their joint intergovernmental functions at a center created in Title 62A,
41 Chapter 4a.

42 Section 2. Section **63-30-10** is amended to read:

43 **63-30-10. Waiver of immunity for injury caused by negligent act or omission of**
44 **employee -- Exceptions.**

45 Immunity from suit of all governmental entities is waived for injury proximately caused
46 by a negligent act or omission of an employee committed within the scope of employment except
47 if the injury arises out of, in connection with, or results from:

48 (1) the exercise or performance or the failure to exercise or perform a discretionary
49 function, whether or not the discretion is abused;

50 (2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional
51 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of
52 mental anguish, or violation of civil rights;

53 (3) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue,
54 deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

55 (4) a failure to make an inspection or by making an inadequate or negligent inspection;

56 (5) the institution or prosecution of any judicial or administrative proceeding, even if
57 malicious or without probable cause;

58 (6) a misrepresentation by an employee whether or not it is negligent or intentional;

- 59 (7) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;
60 (8) the collection of and assessment of taxes;
61 (9) the activities of the Utah National Guard;
62 (10) the incarceration of any person in any state prison, county or city jail, or other place
63 of legal confinement;
64 (11) any natural condition on publicly owned or controlled lands, any condition existing
65 in connection with an abandoned mine or mining operation, or any activity authorized by the
66 School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State
67 Lands;
68 (12) research or implementation of cloud management or seeding for the clearing of fog;
69 (13) the management of flood waters, earthquakes, or natural disasters;
70 (14) the construction, repair, or operation of flood or storm systems or subsurface drainage
71 systems;
72 (15) the operation of an emergency vehicle, while being driven in accordance with the
73 requirements of Section 41-6-14;
74 (16) a latent dangerous or latent defective condition of any highway, road, street, alley,
75 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;
76 (17) a latent dangerous or latent defective condition of any public building, structure, dam,
77 reservoir, or other public improvement;
78 (18) the activities of:
79 (a) providing emergency medical assistance;
80 (b) fighting fire;
81 (c) regulating, mitigating, or handling hazardous materials or hazardous wastes;
82 (d) emergency evacuations;
83 (e) transporting or removing injured persons to a place where emergency medical
84 assistance can be rendered or where the person can be transported by a licensed ambulance service;
85 or
86 (f) intervening during dam emergencies; or
87 (19) the exercise or performance or the failure to exercise or perform any function pursuant
88 to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources - Division
89 of Water Resources, which immunity is in addition to all other immunities granted by law.

Legislative Review Note
as of 11-13-01 3:28 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel