

Representative Mike K. McKell proposes the following substitute bill:

GOVERNMENT IMMUNITY WILDLIFE WAIVER

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Highlighted Provisions:

This bill:

- ▶ provides that governmental immunity is not waived for injury related to the activity of wildlife that arises during the use of a public or private road; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-301, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **63G-7-301** is amended to read:



63G-7-301. Waivers of immunity -- Exceptions.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of 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;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act; or

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act.

(3) (a) Except as provided in Subsection (3)(b), immunity from suit of each governmental entity is waived as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement.

(b) Immunity from suit of each governmental entity is not waived if the injury arises out of, in connection with, or results from:

(i) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

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

(4) Immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity from suit of each governmental entity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

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

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

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

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

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

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

(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

- 88 (h) the collection of and assessment of taxes;
- 89 (i) the activities of the Utah National Guard;
- 90 (j) the incarceration of any person in any state prison, county or city jail, or other place
- 91 of legal confinement;
- 92 (k) any natural condition on publicly owned or controlled lands;
- 93 (l) any condition existing in connection with an abandoned mine or mining operation;
- 94 (m) any activity authorized by the School and Institutional Trust Lands Administration
- 95 or the Division of Forestry, Fire, and State Lands;
- 96 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
- 97 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
- 98 if:
- 99 (i) the trail is designated under a general plan adopted by a municipality under Section
- 100 10-9a-401 or by a county under Section 17-27a-401;
- 101 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
- 102 use as evidenced by a written agreement between the owner or operator of the trail
- 103 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
- 104 where the trail is located; and
- 105 (iii) the written agreement:
- 106 (A) contains a plan for operation and maintenance of the trail; and
- 107 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
- 108 where the trail is located has, at minimum, the same level of immunity from suit as the
- 109 governmental entity in connection with or resulting from the use of the trail.
- 110 (o) research or implementation of cloud management or seeding for the clearing of fog;
- 111 (p) the management of flood waters, earthquakes, or natural disasters;
- 112 (q) the construction, repair, or operation of flood or storm systems;
- 113 (r) the operation of an emergency vehicle, while being driven in accordance with the
- 114 requirements of Section 41-6a-212;
- 115 (s) the activities of:
- 116 (i) providing emergency medical assistance;
- 117 (ii) fighting fire;
- 118 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

119 (iv) emergency evacuations;
120 (v) transporting or removing injured persons to a place where emergency medical
121 assistance can be rendered or where the person can be transported by a licensed ambulance
122 service; or
123 (vi) intervening during dam emergencies;
124 (t) the exercise or performance, or the failure to exercise or perform, any function
125 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
126 [~~or~~]
127 (u) unauthorized access to government records, data, or electronic information systems
128 by any person or entity[:]; or
129 (v) injury related to the activity of wildlife that arises during the use of a public or
130 private road.