

HB0364S03 compared with HB0364S01

~~{Omitted text}~~ shows text that was in HB0364S01 but was omitted in HB0364S03
inserted text shows text that was not in HB0364S01 but was inserted into HB0364S03

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1

Governmental Immunity Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor:

2

3 **LONG TITLE**

4 **General Description:**

5 This bill amends the Governmental Immunity Act ~~{of Utah (act)}~~ .

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines terms;

9 ▶ provides that, ~~{under the act, an independent contractor of a municipality}~~ in certain
circumstances, outside legal counsel is ~~{entitled}~~ immune from suit to the same ~~{immunity}~~ extent and
on the same basis as an attorney who is an employee of a municipality ~~{if the independent contractor:}~~ ;
and

- 11 • ~~{is a law firm or attorney hired by the municipality; and}~~
- 12 • ~~{performs legal work related to a governmental function on behalf of the municipality;~~
- 13 ▶ ~~{clarifies that an independent contract described above is not entitled to any employment-~~
related benefits; and}
- 15 ▶ ~~{makes technical changes.}~~

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12 ▸ adds a coordination clause to clarify a technical change made to Section 63G-7-201 in this
13 bill and H.B. 48, Wildland Urban Interface Modifications, if both bills pass and become law.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 This bill provides a coordination clause.

20 AMENDS:

21 **63G-7-102** , as last amended by Laws of Utah 2023, Chapter 16 , as last amended by Laws of Utah
22 2023, Chapter 16

23 **63G-7-201** , as last amended by Laws of Utah 2023, Chapters 34, 105, 259, 329, 452, and
24 **456** , as last amended by Laws of Utah 2023, Chapters 34, 105, 259, 329, 452, and 456

ENACTS:

25 ~~{63G-7-102.5, Utah Code Annotated 1953, Utah Code Annotated 1953}~~

26 Utah Code Sections affected by Coordination Clause:

27 **63G-7-201** , as last amended by Laws of Utah 2023, Chapters 34, 105, 259, 329, 452, and 456 , as
28 last amended by Laws of Utah 2023, Chapters 34, 105, 259, 329, 452, and 456

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

30 Section 1. Section **63G-7-102** is amended to read:

31 **63G-7-102. Definitions.**

32 As used in this chapter:

33 (1) "Arises out of or in connection with, or results from," when used to describe the relationship
34 between conduct or a condition and an injury, means that:

35 (a) there is some causal relationship between the conduct or condition and the injury;

36 (b) the causal relationship is more than any causal connection but less than proximate cause; and

37 (c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is
38 incident to the conduct or condition.

39 (2) "Claim" means any asserted demand for or cause of action for money or damages, whether arising
40 under the common law, under state constitutional provisions, or under state statutes, against a
41 governmental entity or against an employee in the employee's personal capacity.

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(a) "Employee" includes:

(i)

{(A)} a governmental entity's officers, employees, servants, trustees, or commissioners;

(ii) ~~{or~~

{(B)} ~~{an independent contractor of a municipality, if the independent contractor is a law firm or attorney hired by the municipality to perform legal work related to a governmental function on behalf of the municipality;}~~

(ii) a member of a governing body;

(iii) a member of a government entity board;

(iv) a member of a government entity commission;

(v) members of an advisory body, officers, and employees of a Children's Justice Center created in accordance with Section 67-5b-102;

(vi) a student holding a license issued by the State Board of Education;

(vii) an educational aide;

(viii) a student engaged in an internship under Section 53B-16-402 or 53G-7-902;

(ix) a volunteer, as defined in Section 67-20-2; ~~{and{}} or~~

(x) a tutor.

(b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or not the individual holding that position receives compensation.

(c) ~~{ "Employee" }~~ Except as provided in Subsection (3)(a)(i)(B), "employee" does not include an independent contractor.

(4) "Governmental entity" means:

(a) the state and its political subdivisions; and

(b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(5)

(a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.

(b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.

(c) "Governmental function" includes a governmental entity's failure to act.

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(6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person's agent.

(7) "Outside legal counsel" means an attorney who:

(a) is not an employee of a city or town; and

(b) is hired by a city or town to perform legal work.

[(7)] (8) "Personal injury" means an injury of any kind other than property damage.

[(8)] (9) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

[(9)] (10) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.

[(10)] (11) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.

[(11)] (12) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Section 2. Section 2 is enacted to read:

63G-7-102.5. Independent contractors.

The definition of an employee in Section 63G-7-102 as including an independent contractor described in Subsection 63G-7-102(3)(a)(i)(B) does not have the effect of making the independent contractor entitled to any seniority, status, benefits, insurance, salary, minimum wage, overtime pay, workers' compensation, or tax-related withholding from the municipality that hires the independent contractor.

Section 2. Section 63G-7-201 is amended to read:

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

(1)

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- (a) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.
- 93 (b) Outside legal counsel is immune from suit under this chapter to the same extent and on the same
basis as an attorney who is an employee of a city or town for any injury that results from the outside
legal counsel's performance of legal work that is a governmental function of the city or town.
- 97 (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:
- 99 (a) as provided in Section 78B-4-517; and
- 100 (b) for any injury or damage resulting from the implementation of or the failure to implement measures to:
- 102 (i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
- 105 (ii) investigate and control suspected bioterrorism and disease as set out in Sections 26B-7-316 through 26B-7-324;
- 107 (iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26B-7-301, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:
- 111 (A) an emergency shelter;
- 112 (B) housing;
- 113 (C) a staging place; or
- 114 (D) a medical facility; and
- 115 (iv) adopt methods or measures, in accordance with Section 26B-1-202, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.
- 118 (3)
- (a) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:
- 121 (i) a latent dangerous or latent defective condition of:
- 122 (A) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

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- 124 (B) another structure located on any of the items listed in Subsection (3)(a)(i)(A); or
126 (ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir,
or other public improvement.
- 128 (b)
(i) As used in this Subsection (3)(b):
- 129 (A) "Contaminated land" means the same as that term is defined in Section 11-58-102.
131 (B) "Contamination" means the condition of land that results from the placement, disposal, or
release of hazardous matter on, in, or under the land, including any seeping or escaping of the
hazardous matter from the land.
- 134 (C) "Damage" means any property damage, personal injury, or other injury or any loss of any kind,
however denominated.
- 136 (D) "Environmentally compliant" means, as applicable, obtaining a certificate of completion from
the Department of Environmental Quality under Section 19-8-111 following participation
in a voluntary cleanup under Title 19, Chapter 8, Voluntary Cleanup Program, obtaining
an administrative letter from the Department of Environmental Quality for a discrete phase
of a voluntary cleanup that is conducted under a remedial action plan as defined in Section
11-58-605, or complying with the terms of an environmental covenant, as defined in Section
57-25-102, signed by an agency, as defined in Section 57-25-102, and duly recorded in the
office of the recorder of the county in which the contaminated land is located.
- 146 (E) "Government owner" means a governmental entity, including an independent entity, as defined
in Section 63E-1-102, that acquires an ownership interest in land that was contaminated land
before the governmental entity or independent entity acquired an ownership interest in the land.
- 150 (F) "Hazardous matter" means hazardous materials, as defined in Section 19-6-302, hazardous
substances, as defined in Section 19-6-302, or landfill material, as defined in Section 11-58-102.
- 153 (G) "Remediation" means the same as that term is defined in Section 11-58-102.
- 154 (ii)
(A) A government owner and the government owner's officers and employees are immune from suit,
and immunity is not waived, for any claim for damage that arises out of or in connection with, or
results from, contamination of contaminated land.
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(B) A government owner's ownership of contaminated land may not be the basis of a claim against the government owner for damage that arises out of or in connection with, or results from, contamination of contaminated land.

161 (iii) Subsection (3)(b)(ii) does not limit or affect:

162 (A) the liability of a person that placed, disposed of, or released hazardous matter on, in, or under the land; or

164 (B) a worker compensation claim of an employee of an entity that conducts work on or related to contaminated land.

166 (iv) Immunity under Subsection (3)(b)(ii)(A) is not affected by a government owner's remediation of contaminated land if the government owner is environmentally compliant.

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

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

175 (b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), 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;

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

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

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

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

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

188 (h) the collection or assessment of taxes;

189 (i) an activity of the Utah National Guard;

190 (j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

192 (k) a natural condition on publicly owned or controlled land;

193 (l) a condition existing in connection with an abandoned mine or mining operation;

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- (m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- 196 (n) the operation or existence of a trail that is along a water facility, as defined in Section 73-1-8, stream, or river, regardless of ownership or operation of the water facility, stream, or river, if:
- 199 (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
- 201 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:
- 203 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
- 205 (B) the municipality or county where the trail is located; and
- 206 (iii) the written agreement:
- 207 (A) contains a plan for operation and maintenance of the trail; and
- 208 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
- 212 (o) research or implementation of cloud management or seeding for the clearing of fog;
- 213 (p) the management of flood waters, earthquakes, or natural disasters;
- 214 (q) the construction, repair, or operation of flood or storm systems;
- 215 (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- 217 (s) the activity of:
- 218 (i) providing emergency medical assistance;
- 219 (ii) fighting fire;
- 220 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 221 (iv) an emergency evacuation;
- 222 (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
- 225 (vi) intervening during a dam emergency;
- 226 (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
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(u) an unauthorized access to government records, data, or electronic information systems by any person or entity;

231 (v) an activity of wildlife, as defined in Section 23A-1-101, that arises during the use of a public or private road;

233 (w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section 53-14-103; or

238 (x) providing or failing to provide information under Section 53-27-102 or Subsection 41-1a-213(6), (7), or (8), 53-3-207(4), or 53-3-805(5).

240 Section 3. **Effective date.**

This bill takes effect on May 7, 2025.

242 Section 4. **Coordinating H.B. 364 with H.B. 48.**

If H.B. 364, Governmental Immunity Amendments, and H.B. 48, Wildland Urban Interface Modifications, both pass and become law, the Legislature intends that, on January 1, 2026, the amendment to Subsection 63G-7-201(3)(a)(i)(B) in H.B. 364 supersedes the amendment to Subsection 63G-7-201(3)(a)(i)(B) in H.B. 48.

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