

Kay J. Christofferson proposes the following substitute bill:

Governmental Immunity Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends the Governmental Immunity Act.

Highlighted Provisions:

This bill:

- defines terms;
- provides that, in certain circumstances, outside legal counsel is immune from suit to the same extent and on the same basis as an attorney who is an employee of a municipality;
- and
- adds a coordination clause to clarify a technical change made to Section 63G-7-201 in this bill and H.B. 48, Wildland Urban Interface Modifications, if both bills pass and become law.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

- 63G-7-102**, as last amended by Laws of Utah 2023, Chapter 16
- 63G-7-201**, as last amended by Laws of Utah 2023, Chapters 34, 105, 259, 329, 452, and 456

Utah Code Sections affected by Coordination Clause:

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

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

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

30 **63G-7-102 . Definitions.**

31 As used in this chapter:

- 32 (1) "Arises out of or in connection with, or results from," when used to describe the
33 relationship between conduct or a condition and an injury, means that:
34 (a) there is some causal relationship between the conduct or condition and the injury;
35 (b) the causal relationship is more than any causal connection but less than proximate
36 cause; and
37 (c) the causal relationship is sufficient to conclude that the injury originates with, flows
38 from, or is incident to the conduct or condition.
- 39 (2) "Claim" means any asserted demand for or cause of action for money or damages,
40 whether arising under the common law, under state constitutional provisions, or under
41 state statutes, against a governmental entity or against an employee in the employee's
42 personal capacity.
- 43 (3)(a) "Employee" includes:
44 (i) a governmental entity's officers, employees, servants, trustees, or commissioners;
45 (ii) a member of a governing body;
46 (iii) a member of a government entity board;
47 (iv) a member of a government entity commission;
48 (v) members of an advisory body, officers, and employees of a Children's Justice
49 Center created in accordance with Section 67-5b-102;
50 (vi) a student holding a license issued by the State Board of Education;
51 (vii) an educational aide;
52 (viii) a student engaged in an internship under Section 53B-16-402 or 53G-7-902;
53 (ix) a volunteer, as defined in Section 67-20-2; and
54 (x) a tutor.
- 55 (b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or
56 not the individual holding that position receives compensation.
- 57 (c) "Employee" does not include an independent contractor.
- 58 (4) "Governmental entity" means:
59 (a) the state and its political subdivisions; and
60 (b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more
61 law enforcement officers, as defined in Section 53-13-103.
- 62 (5)(a) "Governmental function" means each activity, undertaking, or operation of a
63 governmental entity.

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

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

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

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

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

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

73 [~~7~~] (8) "Personal injury" means an injury of any kind other than property damage.

74 [~~8~~] (9) "Political subdivision" means any county, city, town, school district, community
75 reinvestment agency, special improvement or taxing district, special district, special
76 service district, an entity created by an interlocal agreement adopted under Title 11,
77 Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public
78 corporation.

79 [~~9~~] (10) "Property damage" means injury to, or loss of, any right, title, estate, or interest in
80 real or personal property.

81 [~~10~~] (11) "State" means the state of Utah, and includes each office, department, division,
82 agency, authority, commission, board, institution, hospital, college, university,
83 Children's Justice Center, or other instrumentality of the state.

84 [~~11~~] (12) "Willful misconduct" means the intentional doing of a wrongful act, or the
85 wrongful failure to act, without just cause or excuse, where the actor is aware that the
86 actor's conduct will probably result in injury.

87 *The following section is affected by a coordination clause at the end of this bill.*

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

89 **63G-7-201 . Immunity of governmental entities and employees from suit.**

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

93 (b) Outside legal counsel is immune from suit under this chapter to the same extent and
94 on the same basis as an attorney who is an employee of a city or town for any injury
95 that results from the outside legal counsel's performance of legal work that is a
96 governmental function of the city or town.

97 (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a

98 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
101 implement measures to:

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

105 (ii) investigate and control suspected bioterrorism and disease as set out in Sections
106 26B-7-316 through 26B-7-324;

107 (iii) respond to a national, state, or local emergency, a public health emergency as
108 defined in Section 26B-7-301, or a declaration by the President of the United
109 States or other federal official requesting public health related activities, including
110 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
116 care providers, public health entities, and health care insurers to coordinate among
117 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
119 immunity is not waived, for any injury if the injury arises out of or in connection
120 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,
123 or viaduct; or

124 (B) another structure located on any of the items listed in Subsection (3)(a)(i)(A);
125 or

126 (ii) a latent dangerous or latent defective condition of any public building, structure,
127 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
130 11-58-102.

131 (B) "Contamination" means the condition of land that results from the placement,

132 disposal, or release of hazardous matter on, in, or under the land, including any
133 seeping or escaping of the hazardous matter from the land.

134 (C) "Damage" means any property damage, personal injury, or other injury or any
135 loss of any kind, however denominated.

136 (D) "Environmentally compliant" means, as applicable, obtaining a certificate of
137 completion from the Department of Environmental Quality under Section
138 19-8-111 following participation in a voluntary cleanup under Title 19, Chapter
139 8, Voluntary Cleanup Program, obtaining an administrative letter from the
140 Department of Environmental Quality for a discrete phase of a voluntary
141 cleanup that is conducted under a remedial action plan as defined in Section
142 11-58-605, or complying with the terms of an environmental covenant, as
143 defined in Section 57-25-102, signed by an agency, as defined in Section
144 57-25-102, and duly recorded in the office of the recorder of the county in
145 which the contaminated land is located.

146 (E) "Government owner" means a governmental entity, including an independent
147 entity, as defined in Section 63E-1-102, that acquires an ownership interest in
148 land that was contaminated land before the governmental entity or independent
149 entity acquired an ownership interest in the land.

150 (F) "Hazardous matter" means hazardous materials, as defined in Section 19-6-302,
151 hazardous substances, as defined in Section 19-6-302, or landfill material, as
152 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
155 are immune from suit, and immunity is not waived, for any claim for damage
156 that arises out of or in connection with, or results from, contamination of
157 contaminated land.

158 (B) A government owner's ownership of contaminated land may not be the basis
159 of a claim against the government owner for damage that arises out of or in
160 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
163 on, in, or under the land; or

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

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

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

- 173 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
174 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,
176 false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of
177 process, libel, slander, deceit, interference with contract rights, infliction of mental
178 anguish, or violation of civil rights;
- 179 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,
180 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
181 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
184 malicious or without probable cause;
- 185 (f) a misrepresentation by an employee whether or not the misrepresentation is negligent
186 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
191 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;
- 194 (m) an activity authorized by the School and Institutional Trust Lands Administration or
195 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
197 73-1-8, stream, or river, regardless of ownership or operation of the water facility,
198 stream, or river, if:
- 199 (i) the trail is designated under a general plan adopted by a municipality under

- 200 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
- 202 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
- 204 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
- 209 right-of-way where the trail is located has, at a minimum, the same level of
- 210 immunity from suit as the governmental entity in connection with or resulting
- 211 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
- 216 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
- 223 assistance can be rendered or where the person can be transported by a licensed
- 224 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
- 227 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water
- 228 Resources;
- 229 (u) an unauthorized access to government records, data, or electronic information
- 230 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
- 232 a public or private road;
- 233 (w) a communication between employees of one or more law enforcement agencies

234 related to the employment, disciplinary history, character, professional competence,
235 or physical or mental health of a peace officer, or a former, current, or prospective
236 employee of a law enforcement agency, including any communication made in
237 accordance with Section 53-14-103; or
238 (x) providing or failing to provide information under Section 53-27-102 or Subsection
239 41-1a-213(6), (7), or (8), 53-3-207(4), or 53-3-805(5).

240 Section 3. **Effective Date.**

241 This bill takes effect on May 7, 2025.

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

243 If H.B. 364, Governmental Immunity Amendments, and H.B. 48, Wildland Urban
244 Interface Modifications, both pass and become law, the Legislature intends that, on January 1,
245 2026, the amendment to Subsection 63G-7-201(3)(a)(i)(B) in H.B. 364 supersedes the
246 amendment to Subsection 63G-7-201(3)(a)(i)(B) in H.B. 48.