

Senator D. Chris Buttars proposes the following substitute bill:

GOVERNMENTAL IMMUNITY FOR TRAILS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttars

House Sponsor: Merlynn T. Newbold

LONG TITLE

General Description:

This bill modifies the Governmental Immunity Act of Utah, the Water and Irrigation Title, and the Judicial Code to amend provisions related to immunity for certain trails along a ditch, canal, stream, or river and to amend immunity provisions for inherent risks of certain activities.

Highlighted Provisions:

This bill:

- ▶ provides that governmental immunity is not waived for a pedestrian or equestrian trail that is along a ditch, canal, stream, or river regardless of ownership or operation of the ditch, canal, stream, or river, if the trail is designated under a general plan adopted by a municipality or a county;
- ▶ provides that the owner of a ditch, canal, stream, or river property is immune from suit if:
 - the property damage or personal injury results from the use of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river;
 - the trail is designated under a general plan adopted by a municipality or county;

and



26 • the trail right-of-way owner has a written agreement with the municipality or
 27 county opening the right-of-way to public use;

27a **H→ ▶ requires the written agreement to provide that the owner of the right-of-way where**
 27b **trail is located has the same level of immunity as a governmental entity from suit in connection**
 27c **with or resulting from the use of the trail; ←H**

28 ▶ amends the definition of recreational activity, used in connection with inherent risks
 29 of certain recreational activities, to include walking, running, and jogging;

30 ▶ provides that a person who is injured or suffers property damage while participating
 31 in a recreational activity may not seek recovery from the owner of property that is
 32 made available to a county, municipality, **S→ [or an independent] ←S** special district **S→ , or local**
 32a **district ←S** for

33 recreational activity purposes; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **63-30d-301**, as last amended by Chapters 2 and 99, Laws of Utah 2005

42 **73-1-8**, Utah Code Annotated 1953

43 **78-27-63**, as last amended by Chapter 304, Laws of Utah 2006

44

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

46 Section 1. Section **63-30d-301** is amended to read:

47 **63-30d-301. Waivers of immunity -- Exceptions.**

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

50 (b) Actions arising out of contractual rights or obligations are not subject to the
 51 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

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

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

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

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

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

67 (d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of
68 Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the
69 governmental entity when the governmental entity has taken or damaged private property for
70 public uses without just compensation;

71 (e) subject to Subsection 63-30d-302(2), as to any action brought to recover [~~attorneys'~~
72 attorney fees under Sections 63-2-405 and 63-2-802;

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

75 (g) as to any action brought to obtain relief from a land use regulation that imposes a
76 substantial burden on the free exercise of religion under Title 63, Chapter 90b, Utah Religious
77 Land Use Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 (h) the collection of and assessment of taxes;

110 (i) the activities of the Utah National Guard;

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

113 (k) any natural condition on publicly owned or controlled lands[-];

114 (l) any condition existing in connection with an abandoned mine or mining operation[-;
115 ~~or~~];

116 (m) any activity authorized by the School and Institutional Trust Lands Administration
117 or the Division of Forestry, Fire, and State Lands;

118 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,

119 canal, stream, or river regardless of ownership or operation of the ditch, canal, stream, or river
 120 if:

121 (i) the trail is designated under a general plan adopted by a municipality under Section
 122 10-9a-401 or by a county under Section 17-27a-401;

123 (ii) the right-of-way where the trail is located is open to public use as evidenced by a
 124 written agreement between the owner of the trail right-of-way and the municipality or county
 125 where the trail is located; and

126 (iii) the written agreement ~~H~~→ :

126a (A) ~~←H~~ contains a plan for operation and maintenance of the trail; ~~H~~→ and

126b (B) provides that the owner of the right-of-way where trail is located has the same

126c level of immunity as a governmental entity from suit in connection with or resulting from the

126d use of the trail; ~~←H~~

127 ~~[(t)]~~ (o) research or implementation of cloud management or seeding for the clearing of
 128 fog;

129 ~~[(m)]~~ (p) the management of flood waters, earthquakes, or natural disasters;

130 ~~[(n)]~~ (q) the construction, repair, or operation of flood or storm systems;

131 ~~[(o)]~~ (r) the operation of an emergency vehicle, while being driven in accordance with
 132 the requirements of Section 41-6a-208;

133 ~~[(p)]~~ (s) the activities of:

134 (i) providing emergency medical assistance;

135 (ii) fighting fire;

136 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

137 (iv) emergency evacuations;

138 (v) transporting or removing injured persons to a place where emergency medical
 139 assistance can be rendered or where the person can be transported by a licensed ambulance
 140 service; or

141 (vi) intervening during dam emergencies;

142 ~~[(q)]~~ (t) the exercise or performance, or the failure to exercise or perform, any function
 143 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

144 ~~[(r)]~~ (u) unauthorized access to government records, data, or electronic information
 145 systems by any person or entity.

146 Section 2. Section **73-1-8** is amended to read:

147 **73-1-8. Duties of owners of ditches -- Safe condition -- Bridges.**

148 (1) The owner of any ditch, canal, flume or other watercourse shall:

149 (a) maintain [the same in repair so as] it to prevent waste of water or damage to the

150 property of others[;]; and [~~is required;~~]

151 (b) by bridge or otherwise, [~~to keep such ditch, canal, flume or other watercourse~~] keep
 152 it in good repair where [~~the same~~] it crosses any public road or highway [~~so as~~] to prevent
 153 obstruction to travel or damage or overflow on [~~such~~] the public road or highway[~~, except~~].

154 (2) The provisions of Subsection (1)(b) do not apply where [~~the public~~] a governmental
 155 entity maintains or [~~may hereafter elect~~] elects to maintain [~~devices for that purpose~~] a bridge
 156 or other device to prevent obstruction to travel or damage or overflow on the public road or
 157 highway.

158 (3) The owner of a ditch, canal, stream, or river property is immune from suit if:

159 (a) the property damage or personal injury arises out of, is in connection with, or
 160 results from the use of a pedestrian or equestrian trail that is along a ditch, canal, stream, or
 161 river, regardless of ownership or operation of the ditch, canal, stream, or river;

162 (b) the trail is designated under a general plan adopted by a municipality under Section
 163 10-9a-401 or by a county under Section 17-27a-401;

164 (c) the right-of-way where the trail is located is open to public use as evidenced by a
 165 written agreement between the owner of the trail right-of-way and the municipality or county
 166 where the trail is located; and

167 (d) the written agreement ~~↔~~ :

167a (i) ~~↔~~ contains a plan for operation and maintenance of the trail ~~↔~~ [;] ; and

167b (ii) provides that the owner of the right-of-way where trail is located has the same

167c level of immunity as a governmental entity from suit in connection with or resulting from the
 167d use of the trail; ~~↔~~

168 Section 3. Section **78-27-63** is amended to read:

169 **78-27-63. Inherent risks of certain recreational activities -- Claim barred against**
 170 **county or municipality -- No effect on duty or liability of person participating in**
 171 **recreational activity or other person.**

172 (1) As used in this section:

173 (a) "Inherent risks" means those dangers, conditions, and potentials for personal injury
 174 or property damage that are an integral and natural part of participating in a recreational
 175 activity.

176 (b) "Municipality" has the meaning as defined in Section 10-1-104.

177 (c) "Person" includes an individual, regardless of age, maturity, ability, capability, or
 178 experience, and a corporation, partnership, limited liability company, or any other form of
 179 business enterprise.

180 (d) "Recreational activity" includes a rodeo, an equestrian activity, skateboarding,

181 roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, or in-line
182 skating on property:

183 (i) owned, leased, or rented by, or otherwise made available to:

184 (A) with respect to a claim against a county, the county; and

185 (B) with respect to a claim against a municipality, the municipality; and

186 (ii) intended for the specific use in question.

187 (2) Notwithstanding anything in Sections 78-27-37, 78-27-38, 78-27-39, 78-27-40,
188 78-27-41, 78-27-42, and 78-27-43 to the contrary, no person may make a claim against or
189 recover from any of the following entities for personal injury or property damage resulting
190 from any of the inherent risks of participating in a recreational activity:

191 (a) a county, municipality, ~~§~~ **→** ~~[or independent]~~ ~~←~~ ~~§~~ special district under Title 17A,

191a ~~§~~ **→** ~~[-Chapter 2;~~

192 ~~Independent]~~ ~~←~~ ~~§~~ Special Districts[, for personal injury or property damage resulting from any of the
193 inherent risks of participating in a recreational activity.] ~~§~~ **→** or local district under Title 17B,

193a Chapter 2, Local Districts ~~←~~ ~~§~~ ; or

194 (b) the owner of property that is leased, rented, or otherwise made available to a
195 county, municipality, § **→** ~~[or an independent]~~ ~~←~~ ~~§~~ special district as defined under Title 17A,

195a ~~§~~ **→** ~~[-Chapter 2;~~

196 ~~Independent]~~ ~~←~~ ~~§~~ Special Districts, or § **→** ~~[a]~~ ~~←~~ ~~§~~ local district as defined under Title 17B, Chapter
196a 2, Local

197 Districts, for the purpose of providing or operating a recreational activity.

198 (3) (a) Nothing in this section may be construed to relieve a person participating in a
199 recreational activity from an obligation that the person would have in the absence of this
200 section to exercise due care or from the legal consequences of a failure to exercise due care.

201 (b) Nothing in this section may be construed to relieve any other person from an
202 obligation that the person would have in the absence of this section to exercise due care or
203 from the legal consequences of a failure to exercise due care.

S.B. 98 1st Sub. (Green) - Governmental Immunity for Trails

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill may result in some financial impacts on individuals, property owners, and local governments. This would depend on circumstances of particular events which are impossible to predict.
