

1 **GOVERNMENTAL IMMUNITY FOR TRAILS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: D. Chris Buttars**

5 House Sponsor: Merlynn T. Newbold

7 **LONG TITLE**

8 **General Description:**

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

13 **Highlighted Provisions:**

14 This bill:

15 ▶ provides that governmental immunity is not waived for a pedestrian or equestrian
16 trail that is along a ditch, canal, stream, or river, regardless of ownership or
17 operation of the ditch, canal, stream, or river, if the trail is designated under a
18 general plan adopted by a municipality or a county and other requirements are met;

19 ▶ provides that the owner or operator of a ditch, canal, stream, or river property is
20 immune from suit if:

21 • the damage or personal injury results from the use of a pedestrian or equestrian
22 trail that is along a ditch, canal, stream, or river;

23 • the trail is designated under a general plan adopted by a municipality or county;

24 and

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

27 ▶ requires the written agreement to provide that the owner of the right-of-way where
28 the trail is located has, at minimum, the same level of immunity as the
29 governmental entity from suit in connection with or resulting from the use of the

30 trail;

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

33 ▶ provides that a person who is injured or suffers property damage while participating
34 in a recreational activity may not seek recovery from the owner of property that is
35 made available to a county, municipality, special district, or local district for
36 recreational activity purposes; and

37 ▶ makes technical changes.

38 Monies Appropriated in this Bill:

39 None

40 Other Special Clauses:

41 None

42 Utah Code Sections Affected:

43 AMENDS:

44 **63-30d-301**, as last amended by Chapters 2 and 99, Laws of Utah 2005

45 **73-1-8**, Utah Code Annotated 1953

46 **78-27-63**, as last amended by Chapter 304, Laws of Utah 2006



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

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

50 **63-30d-301. Waivers of immunity -- Exceptions.**

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

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

55 (c) The Division of Water Resources is not liable for failure to deliver water from a
56 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
57 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

58 condition, or safety condition that causes a deficiency in the amount of available water.

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

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

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

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

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

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

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

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

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

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

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

86 or other public improvement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (l) any condition existing in connection with an abandoned mine or mining operation[;
118 or];

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

121 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
122 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
123 if:

124 (i) the trail is designated under a general plan adopted by a municipality under Section
125 10-9a-401 or by a county under Section 17-27a-401;

126 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
127 use as evidenced by a written agreement between the owner or operator of the trail
128 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
129 where the trail is located; and

130 (iii) the written agreement:

131 (A) contains a plan for operation and maintenance of the trail; and

132 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
133 where the trail is located has, at minimum, the same level of immunity from suit as the
134 governmental entity in connection with or resulting from the use of the trail.

135 ~~(t)~~ (o) research or implementation of cloud management or seeding for the clearing of
136 fog;

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

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

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

141 ~~(p)~~ (s) the activities of:

- 142 (i) providing emergency medical assistance;
- 143 (ii) fighting fire;
- 144 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 145 (iv) emergency evacuations;
- 146 (v) transporting or removing injured persons to a place where emergency medical
- 147 assistance can be rendered or where the person can be transported by a licensed ambulance
- 148 service; or

- 149 (vi) intervening during dam emergencies;
- 150 ~~[(t)]~~ (t) the exercise or performance, or the failure to exercise or perform, any function
- 151 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or
- 152 ~~[(r)]~~ (u) unauthorized access to government records, data, or electronic information
- 153 systems by any person or entity.

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

155 **73-1-8. Duties of owners of ditches -- Safe condition -- Bridges.**

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

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

158 property of others~~[-];~~ and ~~[is required];~~

159 (b) by bridge or otherwise, ~~[to keep such ditch, canal, flume or other watercourse]~~ keep

160 it in good repair where ~~[the same]~~ it crosses any public road or highway ~~[so as]~~ to prevent

161 obstruction to travel or damage or overflow on ~~[such]~~ the public road or highway~~[-except].~~

162 (2) The provisions of Subsection (1)(b) do not apply where [the public] a governmental

163 entity maintains or [may hereafter elect] elects to maintain [devices for that purpose] a bridge

164 or other device to prevent obstruction to travel or damage or overflow on the public road or

165 highway.

166 (3) An owner or operator of a ditch, canal, stream, or river, is immune from suit if:

167 (a) the damage or personal injury arises out of, is in connection with, or results from

168 the use of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless

169 of ownership or operation of the ditch, canal, stream, or river;

170 (b) the trail is designated under a general plan adopted by a municipality under Section
171 10-9a-401 or by a county under Section 17-27a-401;

172 (c) the trail right-of-way or the right-of-way where the trail is located is open to public
173 use as evidenced by a written agreement between the owner or operator of the trail
174 right-of-way, or of the right-of-way where the trail is located, and the municipality or county
175 where the trail is located; and

176 (d) the written agreement:

177 (i) contains a plan for operation and maintenance of the trail; and

178 (ii) provides that an owner or operator of the trail right-of-way, or of the right-of-way
179 where the trail is located has, at minimum, the same level of immunity from suit as the
180 governmental entity in connection with or resulting from use of the trail.

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

182 **78-27-63. Inherent risks of certain recreational activities -- Claim barred against**
183 **county or municipality -- No effect on duty or liability of person participating in**
184 **recreational activity or other person.**

185 (1) As used in this section:

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

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

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

193 (d) "Recreational activity" includes a rodeo, an equestrian activity, skateboarding,
194 roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, or in-line
195 skating on property:

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

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

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

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

200 (2) Notwithstanding anything in Sections 78-27-37, 78-27-38, 78-27-39, 78-27-40,
201 78-27-41, 78-27-42, and 78-27-43 to the contrary, no person may make a claim against or
202 recover from any of the following entities for personal injury or property damage resulting
203 from any of the inherent risks of participating in a recreational activity:

204 (a) a county, municipality, [~~or independent~~] special district under Title 17A, [~~Chapter~~
205 ~~2, Independent~~] Special Districts, [~~for personal injury or property damage resulting from any of~~
206 ~~the inherent risks of participating in a recreational activity.~~] or local district under Title 17B,
207 Chapter 2, Local Districts; or

208 (b) the owner of property that is leased, rented, or otherwise made available to a
209 county, municipality, or special district as defined under Title 17A, Special Districts, or local
210 district as defined under Title 17B, Chapter 2, Local Districts, for the purpose of providing or
211 operating a recreational activity.

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

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