

GOVERNMENTAL IMMUNITY FOR TRAILS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttars

House Sponsor: _____

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 or canal 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 or canal, regardless of ownership or operation of the ditch or canal, if the trail is designated under a general plan adopted by a municipality or a county;
- ▶ provides that the owner of a ditch or canal 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 or canal; and
 - the trail is designated under a general plan adopted by a municipality or county;
- ▶ amends the definition of recreational activity, used in connection with inherent risks of certain recreational activities, to include walking, running, and jogging;
- ▶ provides that a person who is injured or suffers property damage while participating in a recreational activity may not seek recovery from the owner of property that is made available to a county, municipality, or an independent special district for



28 recreational activity purposes; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63-30d-301**, as last amended by Chapters 2 and 99, Laws of Utah 2005

37 **73-1-8**, Utah Code Annotated 1953

38 **78-27-63**, as last amended by Chapter 304, Laws of Utah 2006



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

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

42 **63-30d-301. Waivers of immunity -- Exceptions.**

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

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

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

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

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

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

58 (c) as to any action based on the negligent destruction, damage, or loss of goods,

59 merchandise, or other property while it is in the possession of any governmental entity or
60 employee, if the property was seized for the purpose of forfeiture under any provision of state
61 law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

113 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch or
114 canal, regardless of ownership or operation of the ditch or canal, if the trail is designated under
115 a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section
116 17-27a-401;

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

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

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

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

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

124 (i) providing emergency medical assistance;

125 (ii) fighting fire;

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

127 (iv) emergency evacuations;

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

131 (vi) intervening during dam emergencies;

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

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

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

137 **73-1-8. Duties of owners of ditches -- Safe condition -- Bridges.**

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

139 (a) maintain ~~[the same in repair so as]~~ it to prevent waste of water or damage to the
 140 property of others~~[-];~~ and ~~[is required];~~

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

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

148 (3) The owner of a ditch or canal property is immune from suit if:

149 (a) the property damage or personal injury arises out of, is in connection with, or
 150 results from the use of a pedestrian or equestrian trail that is along a ditch or canal, regardless
 151 of ownership or operation of the ditch or canal; and

152 (b) the trail is designated under a general plan adopted by a municipality under Section
153 10-9a-401 or by a county under Section 17-27a-401.

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

155 **78-27-63. Inherent risks of certain recreational activities -- Claim barred against**
156 **county or municipality -- No effect on duty or liability of person participating in**
157 **recreational activity or other person.**

158 (1) As used in this section:

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

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

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

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

169 (i) owned by:

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

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

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

173 (2) Notwithstanding anything in Sections 78-27-37, 78-27-38, 78-27-39, 78-27-40,
174 78-27-41, 78-27-42, and 78-27-43 to the contrary, no person may make a claim against or
175 recover from any of the following entities for personal injury or property damage resulting
176 from any of the inherent risks of participating in a recreational activity:

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

180 (b) the owner of property that is leased, rented, or otherwise made available to a
181 county, municipality, or an independent special district under Title 17A, Chapter 2,
182 Independent Special Districts, for the purpose of providing or operating a recreational activity.

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

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

Legislative Review Note
as of 12-11-06 11:35 AM

Office of Legislative Research and General Counsel

S.B. 98 - 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.

1/11/2007, 8:09:19 AM, Lead Analyst: Allred, S.

Office of the Legislative Fiscal Analyst