

**Senator Curtis S. Bramble** proposes the following substitute bill:

**GOVERNMENTAL IMMUNITY ACT AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Keven J. Stratton

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Governmental Immunity Act of Utah.

**Highlighted Provisions:**

This bill:

- ▶ provides that immunity is retained unless expressly waived;
- ▶ modifies language relating to actions that constitute an exception to a waiver of governmental immunity, replacing that language with language indicating that immunity is not waived for an injury if the injury would not have occurred but for any of those actions; and
- ▶ makes other technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-3-413**, as last amended by Laws of Utah 2014, Chapter 73

**63G-7-101**, as renumbered and amended by Laws of Utah 2008, Chapter 382



26 **63G-7-201**, as last amended by Laws of Utah 2012, Chapter 24

27 **63G-7-301**, as last amended by Laws of Utah 2014, Chapter 145

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

30 Section 1. Section **53A-3-413** is amended to read:

31 **53A-3-413. Use of public school buildings and grounds as civic centers.**

32 (1) As used in this section, "civic center" means a public school building or ground that  
33 is established and maintained as a limited public forum to district residents for supervised  
34 recreational activities and meetings.

35 (2) Except as provided in Subsection (3), all public school buildings and grounds shall  
36 be civic centers.

37 (3) The use of school property for a civic center purpose:

38 (a) may not interfere with a school function or purpose; and

39 (b) is considered a permit for governmental immunity purposes for a governmental  
40 entity under Subsection [~~63G-7-301(5)(c)~~] **63G-7-201(3)(c)**.

41 Section 2. Section **63G-7-101** is amended to read:

42 **63G-7-101. Title -- Scope of waivers and retentions of immunity.**

43 (1) This chapter is known as the "Governmental Immunity Act of Utah."

44 (2) [~~(a)~~] The scope of the waivers and retentions of immunity found in this  
45 comprehensive chapter [~~apply~~]:

46 (a) applies to all functions of government, no matter how labeled[-]; and

47 (b) [~~This single, comprehensive chapter~~] governs all claims against governmental  
48 entities or against their employees or agents arising out of the performance of the employee's  
49 duties, within the scope of employment, or under color of authority.

50 (3) A governmental entity and an employee of a governmental entity retain immunity  
51 from suit unless that immunity has been expressly waived in this chapter.

52 Section 3. Section **63G-7-201** is amended to read:

53 **63G-7-201. Immunity of governmental entities and employees from suit.**

54 (1) Except as [~~may be~~] otherwise provided in this chapter, each governmental entity  
55 and each employee of a governmental entity are immune from suit for any injury that results  
56 from the exercise of a governmental function.

57 (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a  
58 governmental entity, its officers, and its employees are immune from suit for any injury or  
59 damage resulting from the implementation of or the failure to implement measures to:

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

63 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,  
64 Chapter 23b, Detection of Public Health Emergencies Act;

65 (c) respond to a national, state, or local emergency, a public health emergency as  
66 defined in Section 26-23b-102, or a declaration by the President of the United States or other  
67 federal official requesting public health related activities; and

68 (d) adopt methods or measures, in accordance with Section 26-1-30, for health care  
69 providers, public health entities, and health care insurers to coordinate among themselves to  
70 verify the identity of the individuals they serve.

71 (3) Notwithstanding Subsection 63G-7-301(2)(h), a governmental entity, its officers,  
72 and its employees are immune from suit, and immunity is not waived, for any injury  
73 proximately caused by a negligent act or omission of an employee committed within the scope  
74 of employment if the injury would not have occurred but for:

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

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

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

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

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

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

- 88 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
- 89 (h) the collection or assessment of taxes;
- 90 (i) an activity of the Utah National Guard;
- 91 (j) the incarceration of a person in a state prison, county or city jail, or other place of
- 92 legal confinement;
- 93 (k) a natural condition on publicly owned or controlled land;
- 94 (l) a condition existing in connection with an abandoned mine or mining operation;
- 95 (m) an activity authorized by the School and Institutional Trust Lands Administration
- 96 or the Division of Forestry, Fire, and State Lands;
- 97 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
- 98 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
- 99 if:
  - 100 (i) the trail is designated under a general plan adopted by a municipality under Section
  - 101 10-9a-401 or by a county under Section 17-27a-401;
  - 102 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
  - 103 use as evidenced by a written agreement between:
    - 104 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
    - 105 is located; and
    - 106 (B) the municipality or county where the trail is located; and
    - 107 (iii) the written agreement:
      - 108 (A) contains a plan for operation and maintenance of the trail; and
      - 109 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
      - 110 where the trail is located has, at a minimum, the same level of immunity from suit as the
      - 111 governmental entity in connection with or resulting from the use of the trail;
      - 112 (o) research or implementation of cloud management or seeding for the clearing of fog;
      - 113 (p) the management of flood waters, earthquakes, or natural disasters;
      - 114 (q) the construction, repair, or operation of flood or storm systems;
      - 115 (r) the operation of an emergency vehicle, while being driven in accordance with the
      - 116 requirements of Section 41-6a-212;
      - 117 (s) the activity of:
        - 118 (i) providing emergency medical assistance;

- 119           (ii) fighting fire;
- 120           (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 121           (iv) an emergency evacuation;
- 122           (v) transporting or removing an injured person to a place where emergency medical
- 123 assistance can be rendered or where the person can be transported by a licensed ambulance
- 124 service; or
- 125           (vi) intervening during a dam emergency;
- 126           (t) the exercise or performance, or the failure to exercise or perform, any function
- 127 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 128           (u) an unauthorized access to government records, data, or electronic information
- 129 systems by any person or entity;
- 130           (v) an activity of wildlife, as defined in Section [23-13-2](#), that arises during the use of a
- 131 public or private road;
- 132           (w) a latent dangerous or latent defective condition of:
- 133           (i) a highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or
- 134 viaduct; or
- 135           (ii) another structure located on anything listed in Subsection (3)(w)(i); or
- 136           (x) a latent dangerous or latent defective condition of a public building, structure, dam,
- 137 reservoir, or other public improvement.

138           Section 4. Section **63G-7-301** is amended to read:

139           **63G-7-301. Waivers of immunity.**

140           (1) (a) Immunity from suit of each governmental entity is waived as to any contractual

141 obligation.

142           (b) Actions arising out of contractual rights or obligations are not subject to the

143 requirements of Sections [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

144           (c) The Division of Water Resources is not liable for failure to deliver water from a

145 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development

146 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

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

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

149           (a) as to any action brought to recover, obtain possession of, or quiet title to real or

150 personal property;

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

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

159 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of  
160 ~~[Article I, Section 22, of the]~~ Utah Constitution, Article I, Section 22, for the recovery of  
161 compensation from the governmental entity when the governmental entity has taken or  
162 damaged private property for public uses without just compensation;

163 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney  
164 fees under Sections 63G-2-405 and 63G-2-802;

165 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
166 Act; ~~[or]~~

167 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
168 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
169 Land Use Act~~[-]; or~~

170 ~~[(3) (a) Except as provided in Subsection (3)(b), immunity from suit of each  
171 governmental entity is waived as to any injury caused by:]~~

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

174 ~~[(ii) any defective or dangerous condition of a public building, structure, dam,  
175 reservoir, or other public improvement.]~~

176 ~~[(b) Immunity from suit of each governmental entity is not waived if the injury arises  
177 out of, in connection with, or results from:]~~

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

180 ~~[(ii) a latent dangerous or latent defective condition of any public building, structure,~~

181 dam, reservoir, or other public improvement.]

182 [~~(4) Immunity from suit of each governmental entity is waived]~~

183 (h) subject to Subsection 63G-7-201(3), as to any injury proximately caused by a  
184 negligent act or omission of an employee committed within the scope of employment.

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

187 [~~(a) the exercise or performance, or the failure to exercise or perform, a discretionary~~  
188 ~~function, whether or not the discretion is abused;]~~

189 [~~(b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional~~  
190 ~~trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of~~  
191 ~~mental anguish, or violation of civil rights;]~~

192 [~~(c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to~~  
193 ~~issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar~~  
194 ~~authorization;]~~

195 [~~(d) a failure to make an inspection or by making an inadequate or negligent~~  
196 ~~inspection;]~~

197 [~~(e) the institution or prosecution of any judicial or administrative proceeding, even if~~  
198 ~~malicious or without probable cause;]~~

199 [~~(f) a misrepresentation by an employee whether or not it is negligent or intentional;]~~

200 [~~(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil~~  
201 ~~disturbances;]~~

202 [~~(h) the collection of and assessment of taxes;]~~

203 [~~(i) the activities of the Utah National Guard;]~~

204 [~~(j) the incarceration of any person in any state prison, county or city jail, or other place~~  
205 ~~of legal confinement;]~~

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

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

208 [~~(m) any activity authorized by the School and Institutional Trust Lands Administration~~  
209 ~~or the Division of Forestry, Fire, and State Lands;]~~

210 [~~(n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,~~  
211 ~~canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,~~

212 if:]

213 [(i) the trail is designated under a general plan adopted by a municipality under Section  
214 ~~10-9a-401~~ or by a county under Section ~~17-27a-401~~;

215 [(ii) the trail right-of-way or the right-of-way where the trail is located is open to public  
216 use as evidenced by a written agreement between the owner or operator of the trail  
217 right-of-way, or of the right-of-way where the trail is located, and the municipality or county  
218 where the trail is located; and]

219 [(iii) the written agreement:]

220 [(A) contains a plan for operation and maintenance of the trail; and]

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

224 [(o) research or implementation of cloud management or seeding for the clearing of  
225 fog;]

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

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

228 [(r) the operation of an emergency vehicle, while being driven in accordance with the  
229 requirements of Section ~~41-6a-212~~;

230 [(s) the activities of:]

231 [(i) providing emergency medical assistance;]

232 [(ii) fighting fire;]

233 [(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;]

234 [(iv) emergency evacuations;]

235 [(v) transporting or removing injured persons to a place where emergency medical  
236 assistance can be rendered or where the person can be transported by a licensed ambulance  
237 service; or]

238 [(vi) intervening during dam emergencies;]

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

241 [(u) unauthorized access to government records, data, or electronic information  
242 systems by any person or entity; or]

243            [~~(v) injury related to the activity of wildlife, as defined in Section 23-13-2, that arises~~  
244 ~~during the use of a public or private road.]~~