

Senator Curtis S. Bramble proposes the following substitute bill:

GOVERNMENTAL IMMUNITY ACT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Governmental Immunity Act of Utah.

Highlighted Provisions:

This bill:

- ▶ provides that immunity is retained under specified circumstances notwithstanding a waiver of immunity; and
- ▶ modifies a standard applicable to an exception to an immunity waiver provision.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-101, as last amended by Laws of Utah 2015, Chapter 342

63G-7-201, as last amended by Laws of Utah 2015, Chapter 342

63G-7-301, as last amended by Laws of Utah 2015, Chapter 342

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



26 Section 1. Section **63G-7-101** is amended to read:

27 **63G-7-101. Title -- Scope of waivers and retentions of immunity.**

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

29 (2) The scope of the waivers and retentions of immunity found in this comprehensive
30 chapter:

31 (a) applies to all functions of government, no matter how labeled; and

32 (b) governs all claims against governmental entities or against their employees or agents
33 arising out of the performance of the employee's duties, within the scope of employment, or
34 under color of authority.

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

37 (4) If an injury would not have occurred but for conduct or a condition described in
38 Subsection [63G-7-201\(3\)](#) or (4), immunity from suit for the injury is retained notwithstanding
39 Subsections [63G-7-301\(2\)\(c\)](#), (h), and (i).

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

41 **63G-7-201. Immunity of governmental entities and employees from suit.**

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

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

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

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

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

56 (d) adopt methods or measures, in accordance with Section [26-1-30](#), for health care

57 providers, public health entities, and health care insurers to coordinate among themselves to
58 verify the identity of the individuals they serve.

59 (3) A governmental entity, its officers, and its employees are immune from suit, and
60 immunity is not waived, for any injury if the injury arises out of or in connection with, or
61 results from:

62 (a) a latent dangerous or latent defective condition of:

63 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or
64 viaduct; or

65 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

66 (b) a latent dangerous or latent defective condition of any public building, structure,
67 dam, reservoir, or other public improvement.

68 (4) A governmental entity, its officers, and its employees are immune from suit, and
69 immunity is not waived, for any injury proximately caused by a negligent act or omission of an
70 employee committed within the scope of employment, if the injury [~~arises out of or in~~
71 ~~connection with, or results from~~] would not have occurred but for:

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

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

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

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

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

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

85 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

86 (h) the collection or assessment of taxes;

87 (i) an activity of the Utah National Guard;

88 (j) the incarceration of a person in a state prison, county or city jail, or other place of
89 legal confinement;

90 (k) a natural condition on publicly owned or controlled land;

91 (l) a condition existing in connection with an abandoned mine or mining operation;

92 (m) an activity authorized by the School and Institutional Trust Lands Administration
93 or the Division of Forestry, Fire, and State Lands;

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

97 (i) the trail is designated under a general plan adopted by a municipality under Section
98 10-9a-401 or by a county under Section 17-27a-401;

99 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
100 use as evidenced by a written agreement between:

101 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
102 is located; and

103 (B) the municipality or county where the trail is located; and

104 (iii) the written agreement:

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

106 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
107 where the trail is located has, at a minimum, the same level of immunity from suit as the
108 governmental entity in connection with or resulting from the use of the trail;

109 (o) research or implementation of cloud management or seeding for the clearing of fog;

110 (p) the management of flood waters, earthquakes, or natural disasters;

111 (q) the construction, repair, or operation of flood or storm systems;

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

114 (s) the activity of:

115 (i) providing emergency medical assistance;

116 (ii) fighting fire;

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

118 (iv) an emergency evacuation;

119 (v) transporting or removing an injured person to a place where emergency medical
120 assistance can be rendered or where the person can be transported by a licensed ambulance
121 service; or

122 (vi) intervening during a dam emergency;

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

125 (u) an unauthorized access to government records, data, or electronic information
126 systems by any person or entity; or

127 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
128 public or private road.

129 Section 3. Section 63G-7-301 is amended to read:

130 **63G-7-301. Waivers of immunity.**

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

133 (b) Actions arising out of contractual rights or obligations are not subject to the
134 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

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

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

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

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

146 (c) subject to Subsection 63G-7-101(4), as to any action based on the negligent
147 destruction, damage, or loss of goods, merchandise, or other property while it is in the
148 possession of any governmental entity or employee, if the property was seized for the purpose
149 of forfeiture under any provision of state law;

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

154 (e) subject to Subsection [63G-7-302](#)(2), as to any action brought to recover attorney
155 fees under Sections [63G-2-405](#) and [63G-2-802](#);

156 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
157 Act;

158 (g) as to any action brought to obtain relief from a land use regulation that imposes a
159 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
160 Land Use Act;

161 (h) except as provided in Subsection [63G-7-201](#)(3) and subject to Subsection
162 [63G-7-101](#)(4), as to any injury caused by:

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

165 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
166 or other public improvement; and

167 (i) subject to [~~Subsection~~] Subsections [63G-7-101](#)(4) and [63G-7-201](#)(4), as to any
168 injury proximately caused by a negligent act or omission of an employee committed within the
169 scope of employment.