

Senator Todd Weiler proposes the following substitute bill:

GOVERNMENTAL IMMUNITY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to governmental immunity.

Highlighted Provisions:

This bill:

- ▶ provides that immunity is retained under specified circumstances notwithstanding a waiver of immunity;
 - ▶ modifies a standard applicable to an exception to an immunity waiver provision;
- and
- ▶ modifies provisions relating to process to obtain property held by a governmental entity.

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



26 63G-7-301, as last amended by Laws of Utah 2015, Chapter 342

27 63G-7-603, as renumbered and amended by Laws of Utah 2008, Chapter 382

28 78B-5-808, as renumbered and amended by Laws of Utah 2008, Chapter 3

29

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

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

32 **63G-7-101. Title -- Scope of waivers and retentions of immunity.**

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

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

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

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

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

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

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

46 **63G-7-201. Immunity of governmental entities and employees from suit.**

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

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

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

56 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,

57 Chapter 23b, Detection of Public Health Emergencies Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

- 88 (f) a misrepresentation by an employee whether or not the misrepresentation is
- 89 negligent or intentional;
- 90 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
- 91 (h) the collection or assessment of taxes;
- 92 (i) an activity of the Utah National Guard;
- 93 (j) the incarceration of a person in a state prison, county or city jail, or other place of
- 94 legal confinement;
- 95 (k) a natural condition on publicly owned or controlled land;
- 96 (l) a condition existing in connection with an abandoned mine or mining operation;
- 97 (m) an activity authorized by the School and Institutional Trust Lands Administration
- 98 or the Division of Forestry, Fire, and State Lands;
- 99 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
- 100 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
- 101 if:
 - 102 (i) the trail is designated under a general plan adopted by a municipality under Section
 - 103 10-9a-401 or by a county under Section 17-27a-401;
 - 104 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
 - 105 use as evidenced by a written agreement between:
 - 106 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
 - 107 is located; and
 - 108 (B) the municipality or county where the trail is located; and
 - 109 (iii) the written agreement:
 - 110 (A) contains a plan for operation and maintenance of the trail; and
 - 111 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
 - 112 where the trail is located has, at a minimum, the same level of immunity from suit as the
 - 113 governmental entity in connection with or resulting from the use of the trail;
 - 114 (o) research or implementation of cloud management or seeding for the clearing of fog;
 - 115 (p) the management of flood waters, earthquakes, or natural disasters;
 - 116 (q) the construction, repair, or operation of flood or storm systems;
 - 117 (r) the operation of an emergency vehicle, while being driven in accordance with the
 - 118 requirements of Section 41-6a-212;

- 119 (s) the activity of:
- 120 (i) providing emergency medical assistance;
- 121 (ii) fighting fire;
- 122 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 123 (iv) an emergency evacuation;
- 124 (v) transporting or removing an injured person to a place where emergency medical
- 125 assistance can be rendered or where the person can be transported by a licensed ambulance
- 126 service; or
- 127 (vi) intervening during a dam emergency;
- 128 (t) the exercise or performance, or the failure to exercise or perform, any function
- 129 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 130 (u) an unauthorized access to government records, data, or electronic information
- 131 systems by any person or entity; or
- 132 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
- 133 public or private road.

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

135 **63G-7-301. Waivers of immunity.**

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

137 obligation.

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

139 requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

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

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

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

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

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

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

146 personal property;

147 (b) as to any action brought to foreclose mortgages or other liens on real or personal

148 property, to determine any adverse claim on real or personal property, or to obtain an

149 adjudication about any mortgage or other lien that the governmental entity may have or claim

150 on real or personal property;

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

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

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

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

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

166 (h) except as provided in Subsection 63G-7-201(3) and subject to Subsection
167 63G-7-101(4), as to any injury caused by:

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

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

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

175 Section 4. Section 63G-7-603 is amended to read:

176 **63G-7-603. Exemplary or punitive damages prohibited -- Governmental entity**
177 **exempt from execution, attachment, or garnishment.**

178 (1) (a) A judgment may not be rendered against a governmental entity for exemplary or
179 punitive damages.

180 (b) If a governmental entity would be required to pay the judgment under Section

181 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any
182 judgment entered against its employee in the employee's personal capacity even if the judgment
183 is for or includes exemplary or punitive damages.

184 (2) Execution, attachment, or garnishment may not issue against a governmental entity
185 in aid of collecting a judgment against a governmental entity or its employee.

186 Section 5. Section 78B-5-808 is amended to read:

187 **78B-5-808. Property subject to garnishment.**

188 The state and any subdivision, agency, or institution of the state which has in its
189 possession or under its control any credits or other personal property of[;] or owing [~~any debt~~
190 ~~to, the~~] to a defendant in any action[~~, whether as salary or wages, as a public official or~~
191 ~~employee~~] may be subject to attachment, garnishment, and execution in accordance with any
192 rights, remedies, and procedures applicable to attachment, garnishment, and execution,
193 respectively, except as provided in Section 78B-5-809.