

Representative Carol Spackman Moss proposes the following substitute bill:

GOVERNMENTAL IMMUNITY MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Governmental Immunity Act of Utah related to waivers of immunity.

Highlighted Provisions:

This bill:

► waives governmental immunity for a claim for the death of an incarcerated person under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-301, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

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

Section 1. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

1st Sub. H.B. 269



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

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

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

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

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

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

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

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

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

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

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

56 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

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

59 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
60 or other public improvement;

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

64 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
65 a sexual battery, as provided in Section 76-9-702.1, committed:

66 (i) against a student of a public elementary or secondary school, including a charter
67 school; and

68 (ii) by an employee of a public elementary or secondary school or charter school who:

69 (A) at the time of the sexual battery, held a position of special trust, as defined in
70 Section 76-5-404.1, with respect to the student;

71 (B) is criminally charged in connection with the sexual battery; and

72 (C) the public elementary or secondary school or charter school knew or in the exercise
73 of reasonable care should have known, at the time of the employee's hiring, to be a sex
74 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
75 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
76 background check under Section 53G-11-402[?]; and

77 (k) as to a claim for the death of a person incarcerated in a state prison, county or city
78 jail, or other place of legal confinement, if the death results from an act or omission that is so
79 grossly negligent as to demonstrate a substantial lack of concern for whether a serious injury or
80 death would result.

81 (3) (a) As used in this Subsection (3):

82 (i) "Code of conduct" means a code of conduct that:

83 (A) is not less stringent than a model code of conduct, created by the State Board of
84 Education, establishing a professional standard of care for preventing the conduct described in
85 Subsection (3)(a)(i)(D);

86 (B) is adopted by the applicable local education governing body;

87 (C) regulates behavior of a school employee toward a student; and

88 (D) includes a prohibition against any sexual conduct between an employee and a
89 student and against the employee and student sharing any sexually explicit or lewd
90 communication, image, or photograph.

91 (ii) "Local education agency" means:

92 (A) a school district;

93 (B) a charter school; or

94 (C) the Utah Schools for the Deaf and the Blind.

95 (iii) "Local education governing board" means:

96 (A) for a school district, the local school board;

97 (B) for a charter school, the charter school governing board; or

98 (C) for the Utah Schools for the Deaf and the Blind, the state board.

99 (iv) "Public school" means a public elementary or secondary school.

100 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

101 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
102 the term "child" in that section to include an individual under age 18.

103 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
104 claim against a local education agency for an injury resulting from a sexual battery or sexual
105 abuse committed against a student of a public school by a paid employee of the public school
106 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

107 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
108 code of conduct; and

109 (ii) before the sexual battery or sexual abuse occurred, the public school had:

110 (A) provided training on the code of conduct to the employee; and

111 (B) required the employee to sign a statement acknowledging that the employee has
112 read and understands the code of conduct.

113 (4) (a) As used in this Subsection (4):

114 (i) "Higher education institution" means an institution included within the state system
115 of higher education under Section 53B-1-102.

116 (ii) "Policy governing behavior" means a policy adopted by a higher education
117 institution or the Utah Board of Higher Education that:

118 (A) establishes a professional standard of care for preventing the conduct described in

119 Subsections (4)(a)(ii)(C) and (D);

120 (B) regulates behavior of a special trust employee toward a subordinate student;

121 (C) includes a prohibition against any sexual conduct between a special trust employee
122 and a subordinate student; and

123 (D) includes a prohibition against a special trust employee and subordinate student
124 sharing any sexually explicit or lewd communication, image, or photograph.

125 (iii) "Sexual battery" means the offense described in Section [76-9-702.1](#).

126 (iv) "Special trust employee" means an employee of a higher education institution who
127 is in a position of special trust, as defined in Section [76-5-404.1](#), with a higher education
128 student.

129 (v) "Subordinate student" means a student:

130 (A) of a higher education institution; and

131 (B) whose educational opportunities could be adversely impacted by a special trust
132 employee.

133 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
134 claim for an injury resulting from a sexual battery committed against a subordinate student by a
135 special trust employee, unless:

136 (i) the institution proves that the special trust employee's behavior that otherwise would
137 constitute a sexual battery was:

138 (A) with a subordinate student who was at least 18 years old at the time of the
139 behavior; and

140 (B) with the student's consent; or

141 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
142 a policy governing behavior; and

143 (B) before the sexual battery occurred, the higher education institution had taken steps
144 to implement and enforce the policy governing behavior.