

## CHAPTER 182

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**GOVERNMENT - STATE**

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**HOUSE BILL 03-1288**

BY REPRESENTATIVE(S) Smith, Brophy, Hall, Larson, Spradley, Stengel, Fritz, and Hoppe;  
also SENATOR(S) Evans and Isgar.

**AN ACT**

**CONCERNING THE DEFINITION OF TERMS USED IN CONNECTION WITH AN INJURY ARISING OUT OF CERTAIN PUBLIC FACILITIES FOR PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT".**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The General Assembly hereby finds, declares, and determines that:

(a) The Colorado supreme court has recently decided two cases, *City of Longmont v. Henry-Hobbs*, 50 P.3d 906 (Colo. 2002) and *City of Colorado Springs v. Powell*, 48 P.3d 561 (Colo. 2002), in which key terms in the "Colorado Governmental Immunity Act", article 10 of title 24, Colorado Revised Statutes, were interpreted in a manner that may significantly expand the potential liability of governmental entities providing utility services to the public.

(b) The state and its political subdivisions provide essential public services and functions, and the increased legal liability that may result from the *Henry-Hobbs* and *Powell* decisions poses the danger of disrupting or making prohibitively expensive the provision of such services and functions.

(c) As a result of these court decisions, modifications of, and additions to, the definitions contained in the "Colorado Governmental Immunity Act" are necessary to clarify the intent of the general assembly in adopting the Act.

(2) The general assembly therefore finds it necessary to modify the definitions of "dangerous condition" and "operation" contained in the "Colorado Governmental Immunity Act" and to add new definitions of "maintenance", "public sanitation facility", and "public water facility" to the Act.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**SECTION 2.** 24-10-103 (1) and (3) (a), Colorado Revised Statutes, are amended, and the said 24-10-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**24-10-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Dangerous condition" means a physical condition of a facility or the use thereof ~~which~~ THAT constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity OR PUBLIC EMPLOYEE in constructing or maintaining such facility. ~~Maintenance does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.~~ For the purposes of this subsection (1), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition.

(2.5) "MAINTENANCE" MEANS THE ACT OR OMISSION OF A PUBLIC ENTITY OR PUBLIC EMPLOYEE IN KEEPING A FACILITY IN THE SAME GENERAL STATE OF REPAIR OR EFFICIENCY AS INITIALLY CONSTRUCTED OR IN PRESERVING A FACILITY FROM DECLINE OR FAILURE. "MAINTENANCE" DOES NOT INCLUDE ANY DUTY TO UPGRADE, MODERNIZE, MODIFY, OR IMPROVE THE DESIGN OR CONSTRUCTION OF A FACILITY.

(3) (a) "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public hospital, jail, or public water, gas, sanitation, power, or swimming facility. "OPERATION" DOES NOT INCLUDE ANY DUTY TO UPGRADE, MODERNIZE, MODIFY, OR IMPROVE THE DESIGN OR CONSTRUCTION OF A FACILITY.

(5.5) "PUBLIC SANITATION FACILITY" MEANS STRUCTURES AND RELATED APPARATUS USED IN THE COLLECTION, TREATMENT, OR DISPOSITION OF SEWAGE OR INDUSTRIAL WASTES OF A LIQUID NATURE THAT IS OPERATED AND MAINTAINED BY A PUBLIC ENTITY. "PUBLIC SANITATION FACILITY" DOES NOT INCLUDE: A PUBLIC WATER FACILITY; A NATURAL WATERCOURSE EVEN IF DAMMED, CHANNELIZED, OR CONTAINING STORM WATER RUNOFF, DISCHARGE FROM A STORM SEWER, OR DISCHARGE FROM A SEWAGE TREATMENT PLANT OUTFALL; A DRAINAGE, BORROW, OR IRRIGATION DITCH EVEN IF THE DITCH CONTAINS STORMWATER RUNOFF OR DISCHARGE FROM STORM SEWERS; A CURB AND GUTTER SYSTEM; OR OTHER DRAINAGE, FLOOD CONTROL, AND STORMWATER FACILITIES.

(5.7) "PUBLIC WATER FACILITY" MEANS STRUCTURES AND RELATED APPARATUS USED IN THE COLLECTION, TREATMENT, OR DISTRIBUTION OF WATER FOR DOMESTIC AND OTHER LEGAL USES THAT IS OPERATED AND MAINTAINED BY A PUBLIC ENTITY. "PUBLIC WATER FACILITY" DOES NOT INCLUDE: A PUBLIC SANITATION FACILITY; A

NATURAL WATERCOURSE EVEN IF DAMMED, CHANNELIZED, OR USED FOR TRANSPORTING DOMESTIC WATER SUPPLIES; A DRAINAGE, BORROW, OR IRRIGATION DITCH EVEN IF DAMMED, CHANNELIZED, OR CONTAINING STORM WATER RUNOFF OR DISCHARGE; OR A CURB AND GUTTER SYSTEM.

**SECTION 3. Effective date.** This act shall take effect July 1, 2003.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2003