

Representative Margaret Dayton proposes the following substitute bill:

AMENDMENTS TO SETTLEMENT AGREEMENTS
REQUIREMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Margaret Dayton

This act modifies provisions governing state settlement agreements. This act renumbers sections, differentiates between purely financial settlement agreements and those requiring state action, and requires gubernatorial and legislative approval for certain settlement agreements requiring state action. This act authorizes the governor or the Legislature to void settlement agreements lacking proper approval. This act requires the attorney general to report the state's potential financial and legal exposure to the Legislative Management Committee.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-38b-101, as last amended by Chapter 375, Laws of Utah 1997

63-38b-102, as enacted by Chapter 313, Laws of Utah 1995

67-5-1, as last amended by Chapters 212 and 316, Laws of Utah 2000

ENACTS:

63-38b-301, Utah Code Annotated 1953

63-38b-302, Utah Code Annotated 1953

63-38b-303, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63-38b-201, (Renumbered from 63-38b-103, as enacted by Chapter 313, Laws of Utah 1995)

63-38b-202, (Renumbered from 63-38b-104, as last amended by Chapter 41, Laws of Utah



26 2001)

27 **63-38b-401**, (Renumbered from 63-38b-105, as enacted by Chapter 41, Laws of Utah

28 2001)

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

30 Section 1. Section **63-38b-101** is amended to read:

31 **Part 1. General Provisions**

32 **63-38b-101. Definitions.**

33 As used in this chapter:

34 (1) (a) "Action settlement agreement" includes a stipulation, consent decree, settlement
35 agreement, or any other legally binding document or representation that resolves a threatened or
36 pending lawsuit between the state and another party by requiring the state to take legally binding
37 action.

38 (b) "Action settlement agreement" includes stipulations, consent decrees, settlement
39 agreements, and other legally binding documents or representations resolving a dispute between
40 the state and another party when the state is required to pay money and required to take legally
41 binding action.

42 (c) "Action settlement agreement" does not include:

43 (i) the internal process established by the Department of Transportation to resolve
44 construction contract claims;

45 (ii) any resolution of an employment dispute or claim made by an employee of the state
46 of Utah against the state as employer;

47 (iii) adjudicative orders issued by the State Tax Commission, the Public Service
48 Commission, the Labor Commission, or the Department of Workforce Services; or

49 (iv) the settlement of disputes arising from audits, defaults, or breaches of permits,
50 contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.

51 ~~(1)~~ (2) (a) "Agency" means each department, commission, board, council, agency,
52 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
53 unit, bureau, panel, or other administrative unit of the state.

54 (b) "Agency" includes the legislative branch, the judicial branch, the attorney general's
55 office, the State Office of Education, the Board of Regents, the institutional councils of each higher
56 education institution, and each higher education institution.

57 (3) (a) "Financial settlement agreement" [~~means~~] includes a stipulation, consent decree,
58 settlement agreement, and any other legally binding document or representation that resolves a
59 dispute between the state and another party exclusively by requiring the payment of money from
60 one party to the other.

61 (b) "Financial settlement agreement" does not [~~mean~~] include:

62 (i) the internal process established by the Department of Transportation to resolve
63 construction contract claims;

64 (ii) adjudicative orders issued by the State Tax Commission, Public Service Commission,
65 Labor Commission, or the Department of Workforce Services; or

66 (iii) the settlement of disputes arising from audits, defaults, or breaches of permits,
67 contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.

68 [~~(2)~~] (4) "Government entities" means the state and its political subdivisions.

69 Section 2. Section **63-38b-102** is amended to read:

70 **63-38b-102. Notice of voidableness of settlement agreements.**

71 Each financial settlement agreement that might cost government entities more than
72 \$100,000 that is executed by an agency in violation of this chapter, and each action settlement
73 agreement that is executed by an agency in violation of this chapter, is voidable by the governor
74 [~~and~~] or the Legislature as provided in this chapter.

75 Section 3. Section **63-38b-201**, which is renumbered from Section 63-38b-103 is
76 renumbered and amended to read:

77 **Part 2. Financial Settlement Agreements**

78 [~~63-38b-103~~]. **63-38b-201. Governor to approve settlement agreements.**

79 (1) Before legally binding the state by executing a financial settlement agreement that
80 might cost government entities more than \$100,000 to implement, an agency shall submit the
81 proposed financial settlement agreement to the governor for his approval or rejection.

82 (2) The governor shall approve or reject each financial settlement agreement.

83 (3) (a) If the governor approves the financial settlement agreement, the agency may
84 execute the agreement.

85 (b) If the governor rejects the financial settlement agreement, the agency may not execute
86 the agreement.

87 (4) If an agency executes a financial settlement agreement without obtaining the governor's

88 approval under this section, the governor may issue an executive order declaring the settlement
89 agreement void.

90 Section 4. Section **63-38b-202**, which is renumbered from Section 63-38b-104 is
91 renumbered and amended to read:

92 ~~[63-38b-104]~~. 63-38b-202. **Legislative review and approval of settlement**
93 **agreements.**

94 (1) (a) Before legally binding the state by executing a financial settlement agreement that
95 might cost government entities more than \$500,000 to implement, an agency shall:

96 (i) submit the proposed financial settlement agreement to the governor for his approval or
97 rejection as required by Section 63-38b-103; and

98 (ii) if the governor approves the financial settlement agreement, submit the financial
99 settlement agreement to the Legislative Management Committee for its review and
100 recommendations.

101 (b) The Legislative Management Committee shall review the financial settlement
102 agreement and may:

103 (i) recommend that the agency execute the financial settlement agreement;

104 (ii) recommend that the agency reject the financial settlement agreement; or

105 (iii) recommend to the governor that he call a special session of the Legislature to review
106 and approve or reject the financial settlement agreement.

107 (2) (a) Before legally binding the state by executing a financial settlement agreement that
108 might cost government entities more than \$1,000,000 to implement, an agency shall:

109 (i) submit the proposed financial settlement agreement to the governor for his approval or
110 rejection as required by Section ~~[63-38b-103]~~ 63-38b-201; and

111 (ii) if the governor approves the financial settlement agreement, submit the financial
112 settlement agreement to the Legislature for its approval in an annual general session or a special
113 session.

114 (b) (i) If the Legislature approves the financial settlement agreement, the agency may
115 execute the agreement.

116 (ii) If the Legislature rejects the financial settlement agreement, the agency may not
117 execute the agreement.

118 (c) If an agency executes a financial settlement agreement without obtaining the

119 Legislature's approval under this Subsection (2):

120 (i) the governor may issue an executive order declaring the settlement agreement void; or

121 (ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

122 Section 5. Section **63-38b-301** is enacted to read:

123 **Part 3. Action Settlement Agreements**

124 **63-38b-301. Cost evaluation of action settlement agreements.**

125 (1) Before legally binding the state to an action settlement agreement that might cost the
126 state a total of \$100,000 or more to implement, an agency shall estimate the cost of implementing
127 the action settlement agreement and submit that cost estimate to the governor and the Legislative
128 Management Committee.

129 (2) The Legislative Management Committee may:

130 (a) direct its staff to make an independent cost estimate of the cost of implementing the
131 action settlement agreement; and

132 (b) affirmatively adopt a cost estimate as the benchmark for determining which
133 authorizations established by this part are necessary.

134 Section 6. Section **63-38B-302** is enacted to read:

135 **63-38b-302. Governor to approve action settlement agreements.**

136 (1) Before legally binding the state by executing an action settlement agreement that might
137 cost government entities more than \$100,000 to implement, an agency shall submit the proposed
138 settlement agreement to the governor for his approval or rejection.

139 (2) The governor shall approve or reject each action settlement agreement.

140 (3) (a) If the governor approves the action settlement agreement, the agency may execute
141 the agreement.

142 (b) If the governor rejects the action settlement agreement, the agency may not execute the
143 agreement.

144 (4) If an agency executes an action settlement agreement without obtaining the governor's
145 approval under this section, the governor may issue an executive order declaring the settlement
146 agreement void.

147 Section 7. Section **63-38B-303** is enacted to read:

148 **63-38b-303. Legislative review and approval of action settlement agreements.**

149 (1) (a) Before legally binding the state by executing an action settlement agreement that

150 might cost government entities more than \$500,000 to implement, an agency shall:

151 (i) submit the proposed action settlement agreement to the governor for his approval or
152 rejection as required by Section 63-38b-302; and

153 (ii) if the governor approves the action settlement agreement, submit the action settlement
154 agreement to the Legislative Management Committee for its review and recommendations.

155 (b) The Legislative Management Committee shall review the action settlement agreement
156 and may:

157 (i) recommend that the agency execute the settlement agreement;

158 (ii) recommend that the agency reject the settlement agreement; or

159 (iii) recommend to the governor that he call a special session of the Legislature to review
160 and approve or reject the settlement agreement.

161 (2) (a) Before legally binding the state by executing an action settlement agreement that
162 might cost government entities more than \$1,000,000 to implement, an agency shall:

163 (i) submit the proposed action settlement agreement to the governor for his approval or
164 rejection as required by Section 63-38b-302; and

165 (ii) if the governor approves the action settlement agreement, submit the action settlement
166 agreement to the Legislature for its approval in an annual general session or a special session.

167 (b) (i) If the Legislature approves the action settlement agreement, the agency may execute
168 the agreement.

169 (ii) If the Legislature rejects the action settlement agreement, the agency may not execute
170 the agreement.

171 (c) If an agency executes an action settlement agreement without obtaining the
172 Legislature's approval under this Subsection (2):

173 (i) the governor may issue an executive order declaring the action settlement agreement
174 void; or

175 (ii) the Legislature may pass a joint resolution declaring the action settlement agreement
176 void.

177 Section 8. Section **63-38b-401**, which is renumbered from Section 63-38b-105 is
178 renumbered and amended to read:

179 **Part 4. Condemnation and Inverse Condemnation Settlement Agreements**

180 **~~[63-38b-105].~~ 63-38b-401. Condemnation settlements involving the**

181 **Department of Transportation.**

182 (1) Notwithstanding the provisions of this chapter, the Department of Transportation need
183 not obtain the approval of the governor or the Legislature [~~in~~] for financial or action settlement
184 agreements [~~resolving~~] that resolve condemnation or inverse condemnation cases.

185 (2) [~~Settlement~~] Financial settlement agreements involving condemnation or inverse
186 condemnation cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original
187 appraisal shall be presented to the Transportation Commission for approval or rejection.

188 (3) (a) [~~Settlement~~] Financial settlement agreements involving condemnation or inverse
189 condemnation cases for more than \$2,000,000 over the Department of Transportation's original
190 appraisal and all action settlement agreements that resolve condemnation or inverse condemnation
191 cases shall be presented:

192 (i) to the Transportation Commission for approval or rejection; and

193 (ii) if the financial or action settlement agreement is approved by the Transportation
194 Commission, to the Legislative Management Committee.

195 (b) The Legislative Management Committee may recommend approval or rejection of the
196 financial or action settlement agreement.

197 (4) (a) The Department of Transportation may not enter into a financial settlement
198 agreement that resolves a condemnation or inverse condemnation case and requires payment of
199 \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the
200 Transportation Commission has approved the agreement.

201 (b) The Department of Transportation may not enter into a financial settlement agreement
202 that resolves a condemnation or inverse condemnation case and requires payment of more than
203 \$2,000,000 over the Department of Transportation's original appraisal or enter into an action
204 settlement agreement that resolves a condemnation or inverse condemnation case until:

205 (i) the Transportation Commission has approved the agreement; and

206 (ii) the Legislative Management Committee has reviewed [~~and approved~~] the agreement.

207 Section 9. Section **67-5-1** is amended to read:

208 **67-5-1. General duties.**

209 The attorney general shall:

210 (1) perform all duties in a manner consistent with the attorney-client relationship under
211 Section 67-5-17;

212 (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and
213 the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all
214 causes to which the state, or any officer, board, or commission of the state in an official capacity
215 is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

216 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of process
217 as necessary to execute the judgment;

218 (4) account for, and pay over to the proper officer, all moneys that come into the attorney
219 general's possession that belong to the state;

220 (5) keep a file of all cases in which the attorney general is required to appear, including
221 any documents and papers showing the court in which the cases have been instituted and tried, and
222 whether they are civil or criminal, and:

223 (a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to
224 judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not
225 satisfied, the return of the sheriff;

226 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings,
227 and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the
228 sentence has been executed, if not executed, of the reason of the delay or prevention; and

229 (c) deliver this information to the attorney general's successor in office;

230 (6) exercise supervisory powers over the district and county attorneys of the state in all
231 matters pertaining to the duties of their offices, and from time to time require of them reports of
232 the condition of public business entrusted to their charge;

233 (7) give the attorney general's opinion in writing and without fee to the Legislature or
234 either house, and to any state officer, board, or commission, and to any county attorney or district
235 attorney, when required, upon any question of law relating to their respective offices;

236 (8) when required by the public service or directed by the governor, assist any district or
237 county attorney in the discharge of his duties;

238 (9) purchase in the name of the state, under the direction of the state Board of Examiners,
239 any property offered for sale under execution issued upon judgments in favor of or for the use of
240 the state, and enter satisfaction in whole or in part of the judgments as the consideration of the
241 purchases;

242 (10) when the property of a judgment debtor in any judgment mentioned in Subsection (9)

243 has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking
244 precedence of the judgment in favor of the state, redeem the property, under the direction of the
245 state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money
246 necessary for the redemption, upon the order of the state Board of Examiners, out of any money
247 appropriated for these purposes;

248 (11) when in his opinion it is necessary for the collection or enforcement of any judgment,
249 institute and prosecute on behalf of the state any action or proceeding necessary to set aside and
250 annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to
251 the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise
252 appropriated;

253 (12) discharge the duties of a member of all official boards of which the attorney general
254 is or may be made a member by the Utah Constitution or by the laws of the state, and other duties
255 prescribed by law;

256 (13) institute and prosecute proper proceedings in any court of the state or of the United
257 States, to restrain and enjoin corporations organized under the laws of this or any other state or
258 territory from acting illegally or in excess of their corporate powers or contrary to public policy,
259 and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their
260 affairs;

261 (14) institute investigations for the recovery of all real or personal property that may have
262 escheated or should escheat to the state, and for that purpose, subpoena any persons before any of
263 the district courts to answer inquiries and render accounts concerning any property, examine all
264 books and papers of any corporations, and when any real or personal property is discovered that
265 should escheat to the state, institute suit in the district court of the county where the property is
266 situated for its recovery, and escheat that property to the state;

267 (15) administer the Children's Justice Center as a program to be implemented in various
268 counties pursuant to Sections 67-5b-101 through 67-5b-107;

269 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4,
270 Constitutional Defense Council;

271 (17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims
272 Act, in accordance with Section 26-20-13; ~~and~~

273 (18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at

274 health care facilities that receive payments under the state Medicaid program[-]; and
275 (19) (a) report at least twice per year to the Legislative Management Committee on any
276 pending or anticipated lawsuits, other than eminent domain lawsuits, that might:
277 (i) cost the state more than \$500,000; or
278 (ii) require the state to take legally binding action that would cost more than \$500,000 to
279 implement; and
280 (b) if the meeting is closed, include an estimate of the state's potential financial or other
281 legal exposure in that report.