

## Chapter 10 State Settlement Agreements Act

### Part 1 General Provisions

#### **63G-10-101 Title.**

This chapter is known as the "State Settlement Agreements Act."

Enacted by Chapter 382, 2008 General Session

#### **63G-10-102 Definitions.**

As used in this chapter:

- (1)
  - (a) "Action settlement agreement" includes a stipulation, consent decree, settlement agreement, or any other legally binding document or representation that resolves a threatened or pending lawsuit between the state and another party by requiring the state to take legally binding action.
  - (b) "Action settlement agreement" includes stipulations, consent decrees, settlement agreements, and other legally binding documents or representations resolving a dispute between the state and another party when the state is required to pay money and required to take legally binding action.
  - (c) "Action settlement agreement" does not include:
    - (i) the internal process established by the Department of Transportation to resolve construction contract claims;
    - (ii) any resolution of an employment dispute or claim made by an employee of the state of Utah against the state as employer;
    - (iii) adjudicative orders issued by the State Tax Commission, the Public Service Commission, the Labor Commission, or the Department of Workforce Services; or
    - (iv) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.
- (2)
  - (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
  - (b) "Agency" includes the legislative branch, the judicial branch, the attorney general's office, the State Board of Education, the Utah Board of Higher Education, the institutional councils of each higher education institution, and each higher education institution.
- (3)
  - (a) "Financial settlement agreement" includes a stipulation, consent decree, settlement agreement, and any other legally binding document or representation that resolves a dispute between the state and another party exclusively by requiring the payment of money from one party to the other.
  - (b) "Financial settlement agreement" does not include:
    - (i) agreements made under the internal process established by the Department of Transportation to resolve construction contract claims;

- (ii) adjudicative orders issued by the State Tax Commission, Public Service Commission, Labor Commission, or the Department of Workforce Services;
  - (iii) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration; or
  - (iv) agreements made under the internal processes established by the Division of Facilities Construction and Management or by law to resolve construction contract claims made against the state by contractors or subcontractors.
- (4) "Government entities" means the state and its political subdivisions.
- (5) "Settlement agreement report" means a report that:
- (a) states the total amount of the settlement;
  - (b) states the payer of the settlement;
  - (c) states the recipient of the payment;
  - (d) summarizes the circumstances related to the settlement; and
  - (e) contains a copy of the settlement agreement, unless the agreement is not permitted to be disclosed due to a court order or other legal requirement.

Amended by Chapter 535, 2023 General Session

**63G-10-103 Notice of voidableness of settlement agreements.**

- (1) Each action settlement agreement and each financial settlement agreement executed in violation of this chapter is voidable by the governor or the Legislature as provided in this chapter.
- (2)
- (a) When seeking approval of an action settlement agreement or a financial settlement agreement under this chapter, upon request the attorney general shall provide to the approving person any documents or information relevant to the recommended settlement.
  - (b) Information and documents shared under this section are governed by Subsection 67-5-17(6).

Repealed and Re-enacted by Chapter 509, 2024 General Session

## **Part 2**

### **Financial Settlement Agreements**

**63G-10-201 Governor to approve financial settlement agreements.**

- (1) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$250,000 to implement, an agency shall submit the proposed financial settlement agreement to the governor for the governor's approval or rejection.
- (2) The governor shall approve or reject each financial settlement agreement.
- (3)
- (a) If the governor approves the financial settlement agreement, the agency may execute the agreement.
  - (b) If the governor rejects the financial settlement agreement, the agency may not execute the agreement.
- (4) If an agency executes a financial settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.

- (5) An agency executing an agreement under this section shall give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

**63G-10-202 Legislative review and approval of financial settlement agreements.**

- (1)
- (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$1,000,000 to implement, an agency shall:
    - (i) submit the proposed financial settlement agreement to the governor for the governor's approval or rejection as required by Section 63G-10-201; and
    - (ii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislative Management Committee for its review and recommendations.
  - (b) The Legislative Management Committee shall review the financial settlement agreement and may:
    - (i) recommend that the agency execute the financial settlement agreement;
    - (ii) recommend that the agency reject the financial settlement agreement; or
    - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the financial settlement agreement.
- (2)
- (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$2,000,000 to implement, an agency shall:
    - (i) upon initiation of negotiations that an agency reasonably believes to have the potential to lead to a settlement agreement:
      - (A) notify the Legislature's general counsel that negotiations have commenced;
      - (B) continue to keep the Legislature's general counsel informed of material developments in the negotiation process; and
      - (C) permit the Legislature's general counsel to attend the negotiations;
    - (ii) submit the proposed financial settlement agreement to the governor for the governor's approval or rejection as required by Section 63G-10-201; and
    - (iii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislature for its approval in an annual general session or a special session.
  - (b)
    - (i) If the Legislature approves the financial settlement agreement, the agency may execute the agreement.
    - (ii) If the Legislature rejects the financial settlement agreement, the agency may not execute the agreement.
  - (c) If an agency executes a financial settlement agreement without obtaining the Legislature's approval under this Subsection (2):
    - (i) the governor may issue an executive order declaring the settlement agreement void; or
    - (ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

Amended by Chapter 535, 2023 General Session

### **Part 3**

## **Action Settlement Agreements**

#### **63G-10-301 Cost evaluation of action settlement agreements.**

- (1) Before legally binding the state to an action settlement agreement that might cost the state a total of \$250,000 or more to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall estimate the cost of implementing the action settlement agreement and submit that cost estimate to the governor and the Legislative Management Committee.
- (2) The Legislative Management Committee may:
  - (a) direct its staff to make an independent cost estimate of the cost of implementing the action settlement agreement; and
  - (b) affirmatively adopt a cost estimate as the benchmark for determining which authorizations established by this part are necessary.

Amended by Chapter 509, 2024 General Session

#### **63G-10-302 Governor to approve action settlement agreements.**

- (1) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$250,000 to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall submit the proposed settlement agreement, including all terms material to the settlement, to the governor for the governor's approval or rejection.
- (2) The governor shall approve or reject each action settlement agreement.
- (3)
  - (a) If the governor approves the action settlement agreement, the agency may execute the agreement.
  - (b) If the governor rejects the action settlement agreement, the agency may not execute the agreement.
- (4) If an agency executes an action settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.
- (5) An agency executing an agreement under this section shall give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 509, 2024 General Session

#### **63G-10-303 Legislative review and approval of action settlement agreements.**

- (1)
  - (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$1,000,000 to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall:

- (i) submit the proposed action settlement agreement, including all terms that are material to the settlement, to the governor for the governor's approval or rejection as required by Section 63G-10-302; and
- (ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislative Management Committee for its review and recommendations.
- (b) The Legislative Management Committee shall review the action settlement agreement and may:
  - (i) recommend that the agency execute the settlement agreement;
  - (ii) recommend that the agency reject the settlement agreement; or
  - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the settlement agreement.
- (2)
  - (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$2,000,000 to implement, an agency shall:
    - (i) submit the proposed action settlement agreement, including all terms that are material to the settlement, to the governor for the governor's approval or rejection as required by Section 63G-10-302; and
    - (ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislature for its approval in an annual general session or a special session.
  - (b)
    - (i) If the Legislature approves the action settlement agreement, the agency may execute the agreement.
    - (ii) If the Legislature rejects the action settlement agreement, the agency may not execute the agreement.
  - (c) If an agency executes an action settlement agreement without obtaining the Legislature's approval under this Subsection (2):
    - (i) the governor may issue an executive order declaring the action settlement agreement void; or
    - (ii) the Legislature may pass a joint resolution declaring the action settlement agreement void.

Amended by Chapter 509, 2024 General Session

## **Part 4**

### **Department of Transportation Settlement Agreements**

#### **63G-10-401 Condemnation, inverse condemnation settlements involving the Department of Transportation.**

- (1) Notwithstanding the provisions of this chapter, the Department of Transportation need not obtain the approval of the governor or the Legislature for financial or action settlement agreements that resolve condemnation or inverse condemnation cases.
- (2) Financial settlement agreements involving condemnation or inverse condemnation cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal shall be presented to the Transportation Commission for approval or rejection.
- (3)

- (a) Financial settlement agreements involving condemnation or inverse condemnation cases for more than \$2,000,000 over the Department of Transportation's original appraisal and all action settlement agreements that resolve condemnation or inverse condemnation cases shall be presented:
    - (i) to the Transportation Commission for approval or rejection; and
    - (ii) if the financial or action settlement agreement is approved by the Transportation Commission, to the Legislative Management Committee.
  - (b) The Legislative Management Committee may recommend approval or rejection of the financial or action settlement agreement.
- (4)
- (a) The Department of Transportation may not enter into a financial settlement agreement that resolves a condemnation or inverse condemnation case and requires payment of \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the Transportation Commission has approved the agreement.
  - (b) The Department of Transportation may not enter into a financial settlement agreement that resolves a condemnation or inverse condemnation case and requires payment of more than \$2,000,000 over the Department of Transportation's original appraisal or enter into an action settlement agreement that resolves a condemnation or inverse condemnation case until:
    - (i) the Transportation Commission has approved the agreement; and
    - (ii) the Legislative Management Committee has reviewed the agreement.
- (5) The Department of Transportation shall, for each settlement agreement approved under this section for an amount greater than \$1,000,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

**63G-10-402 Department of Transportation construction contract claim settlement agreement approval and review.**

- (1) As used in this section:
- (a) "Claims review board" means a committee established by the department to hear unresolved claims and make recommendations for settlement to the deputy director of the department.
  - (b) "Department" means the Department of Transportation created in Section 72-1-201.
  - (c) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.
- (2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a construction contract claim in accordance with this section.
- (3) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$250,000 to implement shall be presented to the Transportation Commission for approval or rejection.
- (4) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$1,000,000 to implement shall be presented:

- (a) to the Transportation Commission for approval or rejection; and
  - (b) to the governor for approval or rejection.
- (5)
- (a) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$2,000,000 to implement shall be presented:
    - (i) to the Transportation Commission for approval or rejection;
    - (ii) to the governor for approval or rejection; and
    - (iii) if the construction contract claim settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.
  - (b) The Legislative Management Committee may recommend approval or rejection of the construction contract claim settlement agreement.
- (6)
- (a) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$250,000 to implement until the Transportation Commission has approved the agreement.
  - (b) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$1,000,000 to implement until the Transportation Commission and the governor have approved the agreement.
  - (c) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$2,000,000 to implement until:
    - (i) the Transportation Commission has approved the agreement;
    - (ii) the governor has approved the agreement; and
    - (iii) the Legislative Management Committee has reviewed the agreement.
- (7) The department shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

**63G-10-403 Department of Transportation bid or request for proposals protest settlement agreement approval and review.**

- (1) As used in this section:
- (a) "Department" means the Department of Transportation created in Section 72-1-201.
  - (b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.
- (2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

- (3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$250,000 to implement shall be presented to the Transportation Commission for approval or rejection.
- (4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$1,000,000 to implement shall be presented:
  - (a) to the Transportation Commission for approval or rejection; and
  - (b) to the governor for approval or rejection.
- (5)
  - (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$2,000,000 to implement shall be presented:
    - (i) to the Transportation Commission for approval or rejection;
    - (ii) to the governor for approval or rejection; and
    - (iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.
  - (b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.
- (6)
  - (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$250,000 to implement until the Transportation Commission has approved the agreement.
  - (b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$1,000,000 to implement until the Transportation Commission and the governor have approved the agreement.
  - (c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$2,000,000 to implement until:
    - (i) the Transportation Commission has approved the agreement;
    - (ii) the governor has approved the agreement; and
    - (iii) the Legislative Management Committee has reviewed the agreement.
- (7) The department shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

**Part 5**  
**Risk Management Fund Settlement Agreements**



**63G-10-501 Definitions.**

As used in this part:

- (1) "Executive director" means the individual appointed under Section 63A-1-105 as the executive director of the Department of Government Operations, created in Section 63A-1-104.
- (2) "Risk management fund" means the fund created in Section 63A-4-201.
- (3) "Risk manager" means the state risk manager appointed under Section 63A-4-101.5.
- (4) "Settlement amount" means the total cost to implement:
  - (a) an action settlement as defined in Section 63G-10-102, including the cost of the required action and any required monetary payment; or
  - (b) a financial settlement as defined in Section 63G-10-102.

Amended by Chapter 509, 2024 General Session

**63G-10-502 Application of this part.**

The authority required for the risk manager to settle a claim for which the risk management fund may be liable is governed exclusively by this part.

Enacted by Chapter 355, 2015 General Session

**63G-10-503 Risk manager's authority to settle a claim -- Additional approvals required.**

- (1) The risk manager may compromise and settle any claim for which the risk management fund may be liable:
  - (a) if the settlement amount is \$500,000 or less, on the risk manager's own authority;
  - (b) if the settlement amount is more than \$500,000 but not more than \$1,000,000, upon the approval of the attorney general, or the attorney general's representative, and the executive director;
  - (c) if the settlement amount is more than \$1,000,000 but not more than \$1,500,000, upon the governor's approval after receiving approval under Subsection (1)(b);
  - (d) if the settlement amount is more than \$1,500,000 but not more than \$2,000,000, upon the Legislative Management Committee's approval after receiving approval under Subsections (1)(b) and (c); and
  - (e) if the settlement amount is more than \$2,000,000, upon the Legislature's approval after receiving approval under Subsections (1)(b), (c), and (d).
- (2) When seeking approval from a person under Subsection (1), the risk manager shall provide the person a list of each material term in the proposed settlement agreement.
- (3)
  - (a) The risk manager shall, upon initiation of negotiations that the risk manager reasonably believes to have the potential to lead to a settlement requiring approval under Subsection (1)(d) or (e):
    - (i) notify the Legislature's general counsel that negotiations have commenced;
    - (ii) continue to keep the Legislature's general counsel informed of material developments in the negotiation process; and
    - (iii) permit the Legislature's general counsel to attend negotiations.
  - (b) The information that the risk manager shall provide to the Legislature's general counsel under Subsection (3)(a) includes:
    - (i) the nature of the claim that is the subject of the settlement negotiations;
    - (ii) the known facts that support the claim and the known facts that controvert the claim; and
    - (iii) the risk manager's assessment of the potential liability under the claim.

- (c) A document, paper, electronic data, communication, or other material that the risk manager provides to legislative general counsel in the discharge of the risk manager's responsibility under this Subsection (3) may not be considered to be a record, as defined in Section 63G-2-103.
- (d) Information provided by the risk manager to legislative general counsel under Subsection (3) (a) and a communication between the risk manager and legislative general counsel under Subsection (3)(a) shall be considered to be evidence that is subject to Rule 408 of the Utah Rules of Evidence to the fullest extent possible.
- (e) Subsections (3)(c) and (d) apply regardless of whether:
  - (i) the risk manager acts personally under this section or through counsel or another individual acting under the risk manager's direction; or
  - (ii) other individuals under the direction of legislative general counsel are involved in the process described in this section.
- (4) The risk manager shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$1,500,000, give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 509, 2024 General Session